SUPREME COURT, U.S.
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No. 96-

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

LIVING SPRINGS RETREAT, a Religious Corporation,

Petitioner,

v.

COUNTY OF PUTNAM; TOWN OF PUTNAM VALLEY; RONALD FIORENTINO; PHILIP W. ORLANDO; and RUTH A. CLAUSE, individually and as Assessors of the Town of Putnam Valley; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY; and PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Respondents.

On Petition for a Writ of Certiorari to the New York Supreme Court, Appellate Division: Second Judicial Department

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is it a violation of the First and Fourteenth Amendments to the United States Constitution for an otherwise eligible religious organization to be deprived of its state real property tax exemption because: (a) its program is directed to nonadherents of the faith; (b) advertising is directed at the general public; and (c) participants in its programs are not *required* (but are encouraged) to take part in religious services, indoctrination, or similar activities?

2. Did the application of the "primary use" prong of the tripartite test for tax exemption under New York Tax Law Section 420-a violate the Establishment Clause of the First Amendment?

3. Can a tax authority satisfy the religious neutrality and equal protection provisions of the First and Fourteenth Amendments when the exemption was granted or denied on the subjective judgment of tax assessors as to what activities are religious?

PARTIES TO THE PROCEEDINGS

Petitioner: Living Springs Retreat, a religious corporation

Respondents: County of Putnam; Town of Putnam Valley; Ronald Fiorentino; Philip W. Orlando; and Ruth A. Clause, individually and as Assessors of the Town of Putnam Valley; Mahopac Central School District of the Towns of Carmel and Putnam Valley; and Putnam Valley Fire Protection District

There are no parent companies. Living Springs Retreat established Metro Lifestyle Ministries, Inc., a 501(c)(3) nonprofit charitable corporation, to hold title to the New York City Mission. Petitioner makes this declaration pursuant to Supreme Court Rule 29.

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PETITION FOR WRIT OF CERTIORARI

Living Springs Retreat, a religious corporation, petitions for a writ of certiorari to review the Decision and Order of the Supreme Court of the State of New York, Appellate Division: Second Judicial Department, entered on May 8, 1995. A motion for leave to appeal to the Court of Appeals was timely filed. The New York Court of Appeals on July 2, 1996, denied the motion for leave to appeal.

OPINIONS BELOW

The Decision of the Judicial Hearing Officer for the Supreme Court of the State of New York, County of Putnam, dated October 27, 1992, is unreported and reprinted in the Appendix at 9a-18a, *infra*. The Decision and Order of the Supreme Court of the Sate of New York, Appellate Division: Second Department, filed May 8, 1995, is reported at 626 N.Y.S.2d 268, 215 A.D.2d 449 (1995), and reprinted in the Appendix at 1a-9a, *infra*.

JURISDICTION

The Decision and Order of the Supreme Court of New York, Appellate Division; Second Judicial Department, was entered on March 8, 1995. *See* App. at 3a-6a[1]. The Order with Notice of Entry was served on petitioner's counsel by the attorney for respondents on March 28, 1996.[2] A timely Notice of Motion for Leave to Appeal to the Court of Appeals was denied on July 2, 1996. *See* App. at 1a-2a.

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[1] "App. at __a" refers to the Appendix herein.

[2] Under CPLR § 5513 the time within which a motion for permission to appeal must be made is thirty days from the date of service by the prevailing party of a copy of the judgment or order appealed from and written notice of entry.

The jurisdiction of this Court to review the decision of the New York Supreme Court, Appellate Division: Second Department, is invoked under 28 U.S.C. § 1257(a). This intermediate state appellate court is the highest state court making a determination on the merits and is the highest court in which a decision could be had since in this case there is only discretionary review available in the Court of Appeals.[3] Discretionary review was sought but denied. *See American Ry. Exp. Co. v. Levee*, 263 U.S. 19, 20-21 (1923).

Justice Ginsburg entered an order extending the time for filing a petition for writ of certiorari from September 30, 1996, until October 14, 1996. App. at 38a, *infra*.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment 1, states in part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .

United States Constitution, Amendment 14, Section 1, states in part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due

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[3] "[A]n appeal of right to the New York Court of Appeals under CPLR § 5601(b)(1) does not lie if the decision appealed from was or could have been based upon such ground other than construction of the Constitution." *Board of Educ. v. Wieder*, 72 N.Y.2d 174, 527 N.E.2d 767 (N.Y. 1988). The Appellate Division held that the subject property was not used primarily for petitioner's religious purposes.

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

New York Constitution, Article XVI, Section 1 provides:

> Exemptions from taxation may be granted only by general laws. Exemptions may be altered or repealed except those exempting real or personal property used exclusively for religious, educational, or charitable purposes as defined by law and owned by any corporation or association organized or conducted exclusively for one or more of such purposes and not operating for profit.

New York Real Property Tax Law, Section 420-a, provides in part:

> (a) Real property owned by a corporation or association organized or conducted exclusively for religious, charitable, hospital, educational, or moral or mental improvement of men, women, or children purposes, or for two or more such purposes either by the owning corporation or association or by another such corporation or association as hereinafter provided shall be exempt from taxation as provided in this section.
>
> (b) Real property such as specified in paragraph (a) of this subdivision shall not be exempt if any officer, member, or employee of the owning corporation or association shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes, or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purposes be a guise or pretense for directly

> or indirectly making any other pecuniary profit for such corporation or association or for any of its members or employees; or if it be not in good faith organized or conducted exclusively for one or more of such purposes.

STATEMENT OF THE CASE

This case involves the determination by the Appellate Division that the real property for which Living Springs Retreat claimed tax exemption was not used primarily for a religious purpose simply because (a) its program is directed to nonadherents of the faith; (b) advertising is directed at the general public; and (c) participants in the program at Living Springs are not required to participate in religious services, indoctrination, or similar activities.

Living Springs Retreat claims that respondents' refusal to grant tax exemption violates its constitutional rights under the First and Fourteenth Amendments to the United States Constitution. It contends that the trial court and Appellate Division's holdings violate the Religion Clauses of the First Amendment to the United States Constitution.

A. New York Real Property Tax Law Section 420-a

New York Real Property Tax Law Section 420-a provides for tax exemption as to real property owned by a corporation or association organized or conducted exclusively for religious, charitable, hospital, educational, or moral or mental improvement. The trial court correctly found that to be entitled to tax exemption under Section 420-a, a religious organization must meet a tripartite test:

> (1) the group must be organized or conducted exclusively for religious purposes (2) the property must be used primarily in furtherance of that purpose

> and (3) no pecuniary benefit may inure to the benefit of any of its officers, members or employees, nor may it be used as a guise for profit making operations.

App. at 10a.

The trial court also correctly held that "'Courts may not inquire into or classify the content of the doctrine, dogmas and teachings held by that body to be integral to its religion, but must accept that body's characterization of its own beliefs and activities and those of its adherents so long as that characterization is made in good faith and not a sham'. (*Holy Spirit Assoc. for Unification of World Christianity v. Tax Commission*, 55 NY2d 512, 518 (1982)." The court again cited *Holy Spirit*, 55 N.Y.2d at 520, stating:

> Where the particular purposes and activities are claimed to be other than religious, the Court may engage in only two inquiries: "Does the religious organization assert that the challenged purposes and activities are religious, and is that assertion bona fide."

App. at 11a.

B. Living Springs Retreat

The trial court found that Living Springs is a religious corporation following the religious doctrines of the Seventh-day Adventist Church. App. at 9a. Under Adventist doctrine and beliefs, the health and physical aspects of man are integrated with and inseparable from the spiritual and involve healing of the whole man. App. at 12a.

Plaintiff's property consists of 38-40 acres upon which are located a church building (which alone was tax exempt),

a lifestyle center and two cottages (used by staff and other volunteer workers) and miscellaneous buildings. *Id.* at 10a.

C. The Tax Assessors

Petitioner's claim that respondents had unconstitutionally discriminated against it was based in part upon tax exemptions that had been granted by the tax assessors to the Friars of Atonement and to the Methodist Church. The trial court asserted "[t]here is no evidence that these uses [on the Friars of Atonement and Methodist Church properties] are similar to plaintiff's use of its property as a reconditioning center." *Id.* at 26a.

In evaluating the Living Springs property Putnam Valley assessor Sal Santamorena looked at the buildings. Appellate Div. J.A. at A-336-37.[4] Santamorena found the people at Living Springs to be religious, *id.* at A-341, but did not consider the programs to be religious. *Id.* at A-340-41. He admitted this critical conclusion may have resulted from his perception of what is religious activity. However, he made no attempt to determine if religious principles were actually taught at Living Springs. *Id.* at A-342.

Philip Orlando, Putnam Valley tax assessor, testified that although he had been to Living Springs Retreat several times to assess the property, he never asked about the nature of Living Springs' activities. *Id.* at A-477-78. He admitted it appeared the Methodist Church property was being used in connection with a construction business. *Id.* at A-501-02.

The 28.56 acre parcel owned by the Friars of Atonement was described by the assessor as being "utilized as a religious

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[4] Reference to the Joint Appendix filed in the Appellate Division containing the record below is cited as "Appellate Div. J.A. at A-__."

retreat by the Friars of Atonement from Graymore." Appellate Div. J.A. at A-473-74. Respondents have conceded that the asserted use of the property was for hiking, walking, recreation, education, nature studies, and Buffer Zone purposes as well as for religious and retreat purposes by the Friars of the Atonement and students. *Id.* at A-1025. That property during the years 1980 through 1984 was improved with a chapel, a dining room, kitchen, dormitory, boathouse, and work sheds. *Id.* But at the trial the assessor was unable to describe what activities actually occurred on the Friars' property. *Id.* at A-475, 476. One of Putnam Valley's assessors, *id.* at A-514, testified he had never attempted to ascertain what actually occurs on that property. *Id.* at A-545.

The Methodist Church property consists of 81.9 acres. *Id.* at A-1013-14. According to Ronald Fiorentino, the chairman of the Board of Assessors of the Town of Putnam Valley, *id.* at A-465, the property is used by church-sponsored Scouts and church-sponsored family camping retreats. *Id.* at A-1016. Mondays through Fridays the church operates a nutrition program and provides lunch for senior citizens and also permits the senior citizens to use its meeting rooms. *Id.* at A- 1016. Thus, the property was clearly not confined to the use of church members, and there was no demonstration that church doctrine was taught to those using the facility. The exemption application also indicates that the Putnam Valley and Continental Rod and Gun Club received free hunting and fishing rights at the camp. *Id.* at A-863.

Tax assessor Ronald Fiorentino, however, testified if an annual application to renew an exemption comes in without any changes, the exemption is granted without further investigation because the assessors "are around town at all times and [they] generally have a good idea, you know, of what is happening on these properties." *Id.* at A-485.

D. The Trial Court Decision

As to the first and third prongs of the tripartite tax exemption test, the trial court found in favor of Living Springs. As to the first prong, or religious purpose test, the court concluded Living Springs had a religious purpose. App. at 11a-12a. The court said with regard to the third or personal inurement prong that "there is no evidence of any pecuniary benefit inuring to corporate officers, members or employees." *Id.* at 11a.

The court held that "[t]he primary issue to be determined then is whether plaintiff's property is used primarily in furtherance of plaintiff's religious purposes." The court said that "[i]n determining whether the property is used for exempt purposes it must appear that the use in question is `necessary or fairly incidental' to the maintenance of the property for the corporate purposes," citing *Greater New York Corp. of Seventh-Day Adventists v. Town of Dover*, 29 A.D.2d 861, 862, 288 N.Y.S.2d 334 (2d Dept. 1968).

The court referred to testimony "that the program [at Living Springs] is directed at non-Adventists by design in an effort to touch the lives of non-Adventists." *Id.* at 13a-14a. "The programs offered are aimed at improving the health and fitness of the guests . . . ." *Id.* at 14a. "There is no requirement for participation in worship by the guests on the Sabbath or at any other time, because of the organization's philosophy that a person should have free choice in spiritual and religious matters." *Id.*

Discussing the religious aspects of Living Springs' program, the trial court found:

> The religious aspect of the program is based upon opportunities presented to the guests to participate in Sabbath worship, opportunities for

> attendance at morning prayers, prayers said by therapists before therapy if the guest is willing, spiritual discussions initiated by staff members or therapists if a guest seems receptive to such discussions, the availability of reading materials including the Bible and books authored by Ellen White, and evening programs showing slide presentations made by George Vandeman, a Seventh Day Adventist television evangelist, on entwined health and spiritual subjects. The spiritual message is aimed generally at bringing guests into touch with God at the power of God's creating in achieving a healthy body.[5] App. at 14a.

The trial court nonetheless concluded the Living Springs property was not used in furtherance of its religious purposes. After analyzing five New York State court decisions, the court concluded "[t]he distinguishing feature of the cases where exemptions were granted is that the primary use of the facility involved adherents on retreat or those involved in the study of religious principles of the faith." Also relevant, according to the trial court's analysis, was whether the advertising was aimed at the general public. *Id.* at 17a.

The trial court's opinion also rejected petitioner's claim of unequal treatment concluding that "[w]hile the First

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[5] Neal Wilson, former president of the General Conference of Seventh-day Adventists, testified that "[t]he Seventh-day Adventist Church encourages, depends upon, and would be greatly crippled if Living Springs Retreat and other organizations similar to it were not to continue with their special ministry." Appellate Div. J.A. at A-119. Wilson explained that the program and advertising are purposely not designed to be a hard sell religious indoctrination because "[t]here is often a prejudice towards something that is religious . . . ." *Id.* at A-129.

Amendment requires neutrality among denominations in granting exemptions, there is just no credible proof of unequal treatment presented in this record, nor is there any proof that the exemption was denied based on the religious faith or beliefs followed by plaintiff's members." *Id.* at 18a. The trial court thus concluded that judgment should be entered on behalf of respondents dismissing the complaints, together with costs and disbursements. *Id.*

E. The Appellate Division's Opinion

The Appellate Division noted that Living Springs was a religious organization. It also found the facility "is opened to the general public and is attended primarily by individuals who are not members of the Seventh Day Adventist religion . . . ." It also observed that "[g]uests are not *required* to attend or take part in any traditionally overt religious activities, such as prayer groups or services[6]. *Id.* at 4a (emphasis added). According to the Appellate Division, petitioner's advertising does not indicate the religious nature of the program. *Id.* at 4a.

Sustaining the trial court's judgment, the Appellate Division narrowly focused its decision, stating:

> Although health and physical well being are central concerns of the Seventh-day Adventist religion, in this case the health-related services are directed by the plaintiff to nonadherents of its

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[6] There is uncontradicted evidence in the record that guests are given opportunity for Bible study and are offered sectarian reading materials. Appellate Div. J.A. at A-151-52, A-156-57. Most of the guests voluntarily attend the morning worship service. *Id.* at A-412. The staff always asks to pray with the guests before starting therapy treatment and are seldom refused. *Id.* at A-413-14.

religious principles. The fact that advertising for those services is aimed at the general public as a whole supports the conclusion that the camp is not used primarily for the plaintiff's religious purposes . . . [citations omitted]. Also significant is the fact that guests are not required to participate in any prayer services, indoctrination, or similar activities . . . [citations omitted].

Id. at 5a.

The Appellate Division also found:

> Since the plaintiff has offered no evidence that the defendant Town of Putnam Valley has granted tax-exempt status to other properties used in a manner similar to the property in question, the plaintiff's claim of discrimination was also properly rejected by the Supreme Court.

Id. at 5a.

F. How The Federal Questions Were Presented

The two Verified Complaints consolidated in this action specifically raised federal constitutional issues. Paragraphs 13 and 14 of both Complaints stated:

> 13. The defendants, by their aforesaid agents, contrary to Sections 420, 420-a or 421 and 1308 of the Real Property Tax Law of the State of New York and contrary to Article 16, Section I of the Constitution of the State of New York and contrary to the First and Fourteenth Amendments of the Constitution of the United States unlawfully, wilfully, intentionally, deliberately and discriminatorily denied the aforesaid application and caused the real property described in paragraph 7 herein to be placed on the assessment roll

of the Town of Putnam Valley and assessed for real property taxation.

14. The defendants, by their aforesaid agents, thereby unlawfully, wilfully, intentionally, deliberately and discriminatorily denied to plaintiff the free exercise of religion, the equal protection of the laws, and due process of law as guaranteed by the New York State and United States Constitutions.

App. 23a-24a.

At the trial petitioner's counsel noted the constitutional dimensions of the case and the potential conflict with federal First Amendment provisions should tax exemption be denied. Appellate Div. J.A. at A-54. The federal constitutional issues were also preserved during the trial. The parties stipulated in court as to the issues that the Judicial Hearing Officer would hear and determine, which included:

One. Is the real property in question used exclusively for charitable, religious or other exempt purposes? And this issue would include any related constitutional question.

Number three is whether the real property in question has been treated by the assessors and by the other defendants in a discriminatory manner, contrary to the United States and New York State Constitutions.

Appellate Div. J.A. at A-458-59.

But the constitutional problem, which is the focus of this Petition, found its origin in respondents' Post-Trial Memorandum of Law at pages 14 and 15. Respondents, citing *Greater New York Corp. of Seventh-day Adventists v. Town of Dover*, 29 A.D.2d 861 (2d Dept. 1968), noted in that case the spiritual retreat operated by the church, which was

granted tax exemption, was not open to the general public but solely to adherents of the faith. Likewise, respondents quoted the court of appeals in *Mtr. of Yeshivath v. Assessor*, 79 N.Y.2d 244, 248 (1992): "The religious instruction programs at Woodbourne are provided to members of the Yeshivath only; they are not open to the general public. No fees are paid for the use of the facility. . . ."

Petitioner's Post-Trial Reply Memorandum of Law specifically addressed respondents' contention that because non-members are solicited to come to Living Springs and to participate in its program, the property is subject to ad valorem property taxes. Plaintiff's Post-Trial Memorandum of Law at pages 40-45. Petitioner argued that "[i]f the New York Tax Exemption Statute permits a court to distinguish between preaching in the pulpit and proselytizing of non-members in determining its entitlement to tax exemption, it places an unconstitutional burden on interests protected by the First Amendment." *Id.* at 42.

In spite of petitioner's constitutional arguments, the Judicial Hearing Officer embraced respondents' nonadherent argument in rejecting petitioner's tax exemption, stating:

> The distinguishing feature of the cases where exemptions were granted is that the primary use of the facility involved adherents on retreat or those involved in the study of religious principles of the faith. Advertising to the general public was found to be a relevant factor in the cases of *The Shrine of Our Lady v. Auriesville*, supra, and in *Greater New York Corp. of Seventh Day Adventists v. Dover*, supra. In this case there is no proof that guests attend for religious reasons, for religious education or study of the Seventh Day Adventist faith, or for any reason other than the improvement of their health and fitness.

App. at 17a.

In disposing of petitioner's equal protection claim, the trial court stated:

> Plaintiff's claim of unequal treatment and discrimination is not supported by the evidence. . . While the First Amendment requires neutrality among denominations in granting exemptions, there is just no credible proof of unequal treatment presented in this record, nor is there any proof that the exemption was denied based on the religious faith or beliefs followed by plaintiff's members.

Id. at 17a-18a.[7]

Petitioner's Brief filed in the New York Supreme Court, Appellate Division: Second Department at pages 43-52 argued the unconstitutionality under the First Amendment of respondents' claim and the trial court's determination that because non-members of the Adventist faith are solicited to come to Living Springs and to participate in its program, the

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[7] The Judicial Hearing Officer also found:

> As to use of residences by staff workers and for workers in the New York City vegetarian restaurant and health food store, such use is primarily residential with respect to this property and not a use incidental to a religious use of the property.

But this finding did not apply to tax years 1980 through 1984. The restaurant and shop in New York City were not opened until October of 1985. Appellate Div. J.A. at A-397-98. Under New York law "the assessment of one year is a separate and different cause of action from the assessment for another year" and "[t]he issue as to each year depends upon what took place that year." *People ex rel. Watchtower Society v. Haring*, 286 A.D. 676, 146 N.Y.S.2d 151 (1955). The Appellate Division did not address this issue.

property is subject to ad valorem property taxes. Petitioner's brief before the Appellate Division specifically argued that "if the tax exemption statute were to be so narrowly construed as to permit a property to be exempt for church members' use but denied when the property is used for religious activities involving the general public, the very validity of all exemptions in New York for religious use would be placed into question, citing *Texas Monthly v. Bullock*, 489 U.S. 1, 11 (1989). Petitioner's Brief in the Appellate Division at 52-56 addressed the requirement of equal treatment under the First and Fourteenth Amendments.

The Appellate Division's Decision and Order ignored petitioner's constitutional arguments as well as the prior First Amendment-based decision of the New York Court of Appeals in *Holy Spirit Ass'n for Unification of World Christianity v. Tax Comm'n*, 55 N.Y.2d 515 (1982), briefed and argued at every stage of this case.

Petitioner continued to raise the First and Fourteenth Amendment issues in its Motion for Leave to Appeal filed with the New York Court of Appeals. *See* App. at 36a-37a.

REASONS FOR GRANTING THE WRIT

Twenty-six years ago this Court found real property tax exemptions for religious organizations as authorized by Article XVI, section 1, of the New York Constitution to be constitutional against an Establishment Clause attack. This Court determined that such tax exemptions were constitutional because such exemptions did not have the effect of interfering with religious beliefs or practices and provided a policy of neutrality that derives from an accommodation of the Establishment and Free Exercise Clauses of the First Amendment. Unfortunately, the administration of the tax exemption law and its interpretation by the New York courts

make a mockery of this Court's decision in *Walz v. Tax Comm'n of New York City*, 397 U.S. 664 (1970).

The decisions below result in substantial interference with a religious organization's religious practices protected by the Free Exercise Clause[8] and violate this Court's repeated pronouncements about religious neutrality. The decisions of the courts below interpreting tax exemptions for religious organizations under New York's statutory and constitutional provisions, if left to stand, invite continued violations of the First Amendment's Religion Clause and the emasculation of this Court's teachings in *Walz* and its progeny. But the decisions are also in direct conflict with *Murdock v. Pennsylvania*, 319 U.S. 105 (1943), where this Court invalidated a licensing system for religious and charitable solicitation under which the administrator had discretion to deny a license to any cause he deemed nonreligious.

I. A CRITICAL ISSUE UNDER THE RELIGION CLAUSES IS WHETHER GOVERNMENTAL ACTION HAS THE EFFECT OF INTERFERING WITH RELIGION.

Chief Justice Burger in *Walz*, 397 U.S. at 669-70, stated:

> Each value judgment under the Religion Clauses must . . . turn on whether particular acts in question are intended to establish or interfere with religious

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[8] The compelling state interest/least restrictive alternative free exercise test set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963), is applicable here without resorting to the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, *et seq.* This is because under this Court's holding in *Employment Div., Dep't of Human Resources v. Smith*, 494 U.S. 872 (1990), the *Sherbert* test remains constitutionally applicable "where the State has in place a system of individual exemptions." *Id.* at 884. The tax exemption statute requires the application of such a system.

> beliefs and practices or have the effect of doing so. Adherence to the policy of neutrality that derives from an accommodation of the Establishment and Free Exercise Clauses has prevented the kind of involvement that would tip the balance toward government control of churches or governmental restraint on religious practice.

In *Walz* the Court addressed the issue of whether the no-establishment proscription of the First Amendment prevented states from providing property tax exemptions for religious organizations, stating:

> The legislative purpose of the property tax exemption is neither the advancement nor the inhibition of religion; it is neither sponsorship nor hostility. New York, in common with the other States, has determined that certain entities that exist in a harmonious relationship to the community at large, and that foster its "moral or mental improvement," should not be inhibited in their activities by property taxation or the hazard of loss of those properties for nonpayment of taxes. It has not singled out one particular church or religious group or even churches as such; rather, it has granted exemption to all houses of religious worship within a broad class of property owned by nonprofit, quasi-public corporations which include hospitals, libraries, playgrounds, scientific, professional, historical and patriotic groups. The State has an affirmative policy that considers these groups as beneficial and stabilizing influences in community life and finds this classification useful, desirable, and in the public interest.

Id. at 672-73.

II. THE APPELLATE DIVISION'S SUBJECTIVE AND DISCRIMINATORY CLASSIFICATION OF WHAT PROPERTY USE QUALIFIES AS RELIGIOUS FOR TAX EXEMPTION UNCONSTITUTIONALLY INTERFERES WITH PETITIONER'S RELIGIOUS BELIEFS AND PRACTICES.

In this case, the New York Supreme Court, Appellate Division: Second Department, sustained the denial of tax exemption for Living Springs Retreat. The court concluded the property in question was not used primarily for a religious purpose simply because (a) its program is directed to nonadherents to the faith; (b) advertising is directed at the general public; and (c) participants in the program are not required to participate in religious services, indoctrination, or similar activities.

Both the trial court and Appellate Division measured Living Springs' claim of religious use of the property against their own subjective yardstick of what activities they deemed to be religious. The trial court concluded since Adventist dogma was not imposed on its guests, App. 15a; since those utilizing the facilities were not subjected to an indoctrination of the 27 fundamental beliefs of the Adventist Church, *id.* at 14a, 15a; and since the brochures and newsletters distributed to the general public as prospective guests did not underscore the religious motivation of Living Springs' operation, *id.* at 15a, the property's use was not primarily religious, *id.* at 15a, 18a.

Living Springs' Certificate of Incorporation provides in part that Living Springs is to "to carry out the religious purposes of the corporation in keeping with the doctrines of the Seventh-day Adventist Church that the whole man must be ministered to, not only the spiritual but the physical and

mental as well." App. at 12a. It was unrefuted that healthful living is a central teaching of the Adventist Church. Appellate Div. J.A at A-93-94. Witnesses testified about the enormous commitment of the Adventist Church to hospitals and health ministries throughout the world. *Id.* at A-91, A-111-12.

Health has been an integral part of both Adventist doctrine and ministry since the church's inception and continues to occupy a central part of its theology. Neal Wilson, former president of the General Conference of Seventh-day Adventists, explained the Adventist charter for its health ministry came from the counsel of one of the church's founders, Ellen G. White. Appellate Div. J.A. at A-90-91. Early in its history, the Adventist Church with one of its initial leaders, Dr. Kellogg of breakfast food fame, founded the Battle Creek Sanitarium which gained recognition as an international health institution. *Id.* at A-92.

The Adventist Church today operates numerous hospitals and medical facilities throughout the world, including Loma Linda University Medical Center, a world-renowned pioneer in health initiatives. *Id.* at A-68-70. Wilson testified about the Adventist Church's involvement with hospitals, sanitariums, and other health care-related institutions:

> And among the teachings of Christ, . . . is the fact that the body is the temple of God, and that therefore one of the strong components of the Gospel is the Gospel of health. Not only is it an adjunct, it is a part of the Gospel, inseparable from the Gospel. No line should be drawn between the preaching of the word and the ministry of what we consider health, lifestyle. The scripture teaches clearly that a part of sanctification of the human being, walking in the steps of Christ, is that the body and health will be in

> the same relationship to God as the soul, or the spirit.

Id. at A-71-72.

Wilson explained when Living Springs advances its health-related ministry, it is carrying out a fundamental teaching of the Seventh-day Adventist Church. *Id.* at A-105. He also testified how ministering to an individual's physical needs carries out Living Springs', as well as the church's, religious objectives:

> I think the church would consider that Living Springs is generically religious, that it would not exist were it not for the church, and that it is primarily religious in its outreach and ministry, as you can see the various things that are indicated there; and one of the purposes of Living Springs is to follow the instruction that has been given whereby if you touch the physical needs of human beings, they are going to be interested in the spiritual needs as well, and therefore I would have to say that Living Springs would certainly be an extension of the church in reaching this particular objective.

Id. at A-105-06.

Presumably, if Living Springs only ministered and advertised to its own members, requiring those participating in its programs to participate in religious services and indoctrination or similar activities, it would be entitled to tax exemption. But such an interpretation of New York tax exemption statute ignores *Walz*. *Walz* stated:

> We find it unnecessary to justify the tax exemption on the social welfare services of "good works" that some churches perform for parishioners

> and others -- family counselling, aid to the elderly and the infirm, and to children. Churches vary substantially in the scope of such services; programs expand or contract according to resources and need. As public-sponsored programs enlarge, private aid from the church sector may diminish. The extent of social services may vary, depending on whether the church serves an urban or rural, a rich or poor constituency. To give emphasis to so variable an aspect of the work of religious bodies would introduce an element of governmental evaluation and standards as to the worth of particular social welfare programs, thus producing a kind of continuing day-to-day relationship which the policy of neutrality seeks to minimize. Hence, the use of a social welfare yardstick as a significant element to qualify for tax exemption could conceivably give rise to confrontations that could escalate to constitutional dimensions.

Id. at 674.

Clearly the *Walz* Court did not even suggest that the core neutrality principles of the Religion Clauses would permit denial of tax exemption for the social welfare services provided by religious organizations. *Walz* recognized that religious organizations vary substantially in the scope of their services. In *Gillette v. United States*, this Court cautioned: "'the more discriminatory and complicated the basis of classification for an exemption -- even a neutral one -- the greater the potential for state involvement' in determining the character of [religious] beliefs and affiliations, thus 'entangl[ing] government in difficult classifications of what is or is not religious.'" 401 U.S. 437, 457 (1971) (quoting *Walz*, 397 U.S. at 698-99).

An earlier New York decision -- *America Press, Inc. v. Lewisohn*, 345 N.Y.S.2d 396, *aff'd*, 372 N.Y.S.2d 194 (1973) -- found that respondents' argument seeking to deny tax exemption by equating the Jesuit's publication activities with general journalism runs afoul of the Establishment Clause. The court stated that to conclude the Jesuit's magazine was secular, and not religious, would violate their right to practice their beliefs. *Id.* at 405. According to the court, it was not within the judicial province "to sit in judgment upon the content and context of pulpiteering, necessarily a matter of controversy and differences of opinion." *Id.* at 403.

Here the tax assessors and the courts below have used their own subjective yardstick to determine what activities of a religious ministry are appropriate to sustain a tax exemption. Both the lower and appellate courts dwell on the fact Living Springs ministered to the general public and did not confine its activities to members of its own faith. Worse yet is the court's suggestion that for a religious organization to be entitled to tax exemption, it must require participants in its programs to take part in religious services, indoctrination, or similar activities.[9]

Oddly, the courts below failed to heed earlier teachings from New York's highest court. In *Holy Spirit Ass'n for Unification of World Christianity v. Tax Comm'n*, 55 N.Y.2d at 527, 450 N.Y.S.2d at 298, that court, in applying the Religion Clauses of the First Amendment, stated:

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[9] Surely such a restrictive interpretation could not be applied to other Section 420-a tax exempt organizations, such as charitable, hospital, educational, or moral improvement organizations which do not generally direct their good work at their own members but rather at the general public.

> The error of the majority of the Tax Commission, of the Special Referee and of the majority at the Appellate Division is that each asserted the right of civil authorities to examine the creed and theology of the Church and to factor out what in its or his considered judgment are the peripheral political and economic aspects, in contradistinction to what was acknowledged to be the essentially religious component. Each then took the view that beliefs and activities which could be objectively accurately described by knowledgeable outsiders as "political" and "economic" were by that fact precluded from being classified as "religious."

Here the respondents ignored Living Springs' declared religious mission and attempted to decide what, from their perspective, was religious. But the Court in *Holy Spirit Ass'n*, 55 N.Y.2d at 527-28, 450 N.Y.S.2d at 298, correctly rejected the concept that civil authorities have the right to decide what is and what is not religious, stating:

> As stated, it is not the province of civil authorities to indulge in such distillation as to what is to be denominated religious and what political or economic. It is for religious bodies themselves, rather than courts or administrative agencies, to define, by their teachings and activities, what their religion is. The courts are obliged to accept such characterization of the activities of such bodies, including that of the Church in the case before us, unless it is found to be insincere or sham.

The courts' inquiry into the use of the property was tantamount to passing judgment on the evangelistic methods employed by Living Springs: *i.e.*, if only Living Springs were more heavy-handed in its approach to proselytism, it would be

entitled to tax exemption. The decisions below represent a forbidden entanglement of church and state and an impermissible invasion by the state into the autonomy of religious bodies. How to allocate a religious organization's energies and financial resources in spreading the gospel, seeking converts, and engaging in religiously-generated social ministries represents a series of ecclesiastical choices. These are choices with which taxing and other civil authorities are forbidden from interfering. This is the very theory upon which the constitutionality of tax exemption for religious property rests. *Walz*, 397 U.S. at 674, 691 (Brennan, J., concurring). In *Larkin v. Grendel's Den*, 459 U.S. 116, 122 (1982), this Court stated that one of the purposes of the Religion Clauses was "to foreclose state interference with the practices of religious faiths . . . ."

Quoting from Justice Stevens' concurrence in *United States v. Lee*, 455 U.S. 252, 263 n.2, the Court in *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 20 (1989), said: "[There exists an] overriding interest in keeping the government -- whether it be the legislature or the courts -- out of the business of evaluating the relative merits of differing religious claims. The risk that governmental approval of some and disapproval of others will be perceived as favoring one religion over another is an important risk the Establishment Clause was designed to preclude."

The Appellate Division's holding has stripped a religious organization's otherwise available immunity from taxation because it devotes less action to ministry to its own adherents and more to the public. This, in effect, penalizes evangelical as distinguished from purely contemplative religions. But this Court in *Murdock v. Pennsylvania*, 319 U.S. 105 (1943), concluded similar governmental action violated the First

Amendment.[10] *Murdock* involved a solicitation ordinance providing a licensing tax. The state attempted to apply the law to itinerant religious booksellers. This Court rejected the concept that the First Amendment protections of religious activities include only prayer, Mass, sermons, and sacraments. It concluded that itinerant evangelists selling religious books house-to-house to the general public (a form of evangelism used by various religious groups) "occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits. It has the same claim to protection as the more orthodox and conventional exercises of religion." *Id.* at 108-09.

The respondents and the courts below interpreted the tax exemption statute so narrowly as to only permit tax exemption of religious organizations' highly sectarian activities while denying tax exemption for their more charitable work. When New York's Constitution and statutes are so narrowly construed as to permit religious organizations tax exemption when their property is "primarily used as a spiritual retreat for adherents of the faith," App. at 16a, but denied when their property is used as a "center of health ministry evangelism" open to the general public, *id.* at 13a, the Establishment Clause, as interpreted by *Walz*, is turned on its head.

The trial court mocks the Establishment Clause, holding, in effect, the more sectarian a program is the greater the

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[10] To exact a tribute of financial support from a religious organization by taxing nonprofit properties devoted to the free exercise of religion directed at the public -- at least while other nonprofit uses would be exempt -- is to tax "the exercise of a privilege granted by the Bill of Rights." *Murdock*, 319 U.S. at 113. This Court in *Speiser v. Randall*, 357 U.S. 513, 518 (1958), recognized that "[t]o deny an exemption to claimants who engage in" actions protected by the First Amendment "is in effect to penalize them for such [actions]."

chance it has for obtaining tax exemption. Conversely, churches that provide homeless shelters, counsel pregnant teens, and provide food and clothing to the needy would be excluded from this government benefit of tax exemption. Such an interpretation not only defies logic but runs counter to this Court's assertion in *Texas Monthly v. Bullock*, 489 U.S. 1, 11 (1989), quoting *Widmar v. Vincent*, 454 U.S. at 274, "that the breadth of an exemption for religious groups is unquestionably an 'important factor' in assessing its constitutionality." *Id.* at 13 n.3.

The decision in this case is certain to generate in future litigation judicial inquiry forbidden by the Establishment Clause. As this Court noted in *New York v. Cathedral Academy*, 434 U.S. 125, 346 (1977), "[t]he prospect of church and state litigating in court about what does or does not have a religious meaning touches the very core of the constitutional guarantee against religious establishment. . . ." *See also Rosenberger v. Rector and Visitors of the Univ. of Virginia*, 115 S. Ct. 2510, 2524 (1995), suggesting unconstitutional entanglement arises from administrative and judicial inquiry into religious practices by different religious faiths. Further, if the reasoning of the courts below were consistently employed, most church social welfare ministries would be subject to taxation.

III. THE MISAPPLICATION OF THE "PRIMARY USE" PRONG OF NEW YORK'S TRIPARTITE TEST FOR TAX EXEMPTION VIOLATES THE ESTABLISHMENT CLAUSE.

The *Walz* Court found that tax exemptions "afford an indirect economic benefit" to religious organizations, 397 U.S. at 674. Clearly, tax exemptions may raise Establishment Clause problems.

In *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1 (1989), this Court ruled unconstitutional a sales tax exemption provided by Texas statute for religious periodicals on the ground it violated the Establishment Clause. The Court noted that where it has validated indirect financial benefits flowing to sectarian organizations, it has "emphasized that the benefits derived by religious organizations flow to a large number of nonreligious groups as well." *Id.* at 897. In fact, the Court noted that "were those benefits confined to religious organizations, they could not have appeared other than as state sponsorship of religion; if that were so, we would not have hesitated to strike them down for lacking a secular purpose and effect." *Id.*

A heavy burden is placed on a fundamental First Amendment protection when a court allows New York to grant a tax exemption to an organization which preaches to adherents while denying tax exemption to an organization which proselytizes to non-adherents. If the tax exemption statute were to be so narrowly construed as to permit a property to be exempt for church members' use but denied when the property is used for religious activities involving the general public, the very validity of all exemptions in New York for religious use would be placed into question. This is because under this Court's precedent, such an interpretation by the state courts would cause the statute to violate the no-establishment proscriptions of the First Amendment.

IV. THE TAXING AUTHORITY VIOLATED THE RELIGIOUS NEUTRALITY AND EQUAL PROTECTION REQUIREMENTS OF THE FIRST AND FOURTEENTH AMENDMENTS WHEN IT BASED ITS DECISION ON SUBJECTIVE PERCEPTIONS.

Any governmental action affecting religious organizations must respect the neutrality and equal protection requirements

of the Constitution's First and Fourteenth Amendments. Respondents' tax exempt status determination of Living Springs, however, runs afoul of those neutrality and equal protection requirements.

The Appellate Division found that Living Springs had not shown the Town of Putnam Valley had granted tax exemption to other properties similarly used as Living Springs' property. And too, Living Springs' claim of discrimination was also properly rejected by the Supreme Court.

The trial court asserted "[t]here is no evidence that these uses [on the Friars of Atonement and Methodist Church properties] are similar to plaintiff's use of its property as a reconditioning center." App. at 18a. But this is not the point. It is important that all of these religious organizations were granted their exemptions by the same assessors who determined what is and is not religious solely on their own subjective perceptions of what is religious and without investigation into the other organizations' religious uses. This violates a cardinal principle that it is the bona fide assertion by the religious organization, not the perception of the assessor, of what is or is not religious that determines the property's tax exempt status. That the assessors did not investigate the other exempt properties exacerbates the problem and leads to discriminatory and arbitrary decisions based strictly on the assessor's subjective judgment as to what is religious.

This case raises the important question of whether government has satisfied the requirements of religious neutrality and equal protection when real property tax exemptions are granted or denied on the subjective judgment of a tax assessor as to what activities are religious. The First Amendment requires neutrality in the granting or denying of

tax exemptions to religious organizations. In *Gillette v. United States*, 401 U.S. at 449, the Court stated:

> An attack founded on disparate treatment of "religious" claims invokes what is perhaps the central purpose of the Establishment Clause -- the purpose of ensuring governmental neutrality in matters of religion.

In *Larson v. Valente*, 456 U.S. 228, 244 (1982), the Court found:

> The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.

The concept that the Establishment Clause requires neutrality between religious organizations has been frequently stated by the Court. *See Roemer v. Board of Public Works of Maryland*, 426 U.S. 736, 745-46 (1976), ("The Court has enforced a scrupulous neutrality by the State, as among religions. . . ."); *Everson v. Board of Educ.*, 330 U.S. 1, 18 (1947) (Government must "be neutral in its relations" with religion); *Zorach v. Clauson*, 343 U.S. 306, 314 (1952) ("the government must be neutral when it comes to competition between sects . . . "); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) ("The First Amendment mandates governmental neutrality between religion and religion.")

In *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 113 S. Ct. 2217, 2230 (1992), this Court found that an equal protection mode of analysis must be employed, stating:

> In determining if the object of a law is a neutral one under the Free Exercise Clause, we can also find guidance in our equal protection cases. As Justice Harlan noted in the related context of the Establishment

> Clause, "[n]eutrality in its application requires an equal protection mode of analysis." *Walz v. Tax Comm'n of New York City*, 397 U.S., at 696, . . . (concurring opinion).

The Court also held in *Church of Lukumi*, 113 S. Ct. at 2227, that "[t]he Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination. The Clause forbids subtle departures from neutrality." Thus, the courts below should not have ended their analysis by only determining that the other church properties did not provide a similar religious use.

Obviously, the First Amendment prohibition against even subtle departures from neutrality extends to tax exemptions, even if it is regarded as a privilege. *United States v. Holmes*, 614 F.2d 985, 990 n.8 (5th Cir. 1980). To deny tax exemption to Living Springs upon the subjective determination by tax assessors of what is religious is to deny Living Springs equal protection.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests this petition be granted.

Dated: October 14, 1996

Respectfully submitted,

LEE BOOTHBY
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4545 42nd Street, NW, Suite 201
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Counsel for Petitioner

APPENDIX

APPENDIX A

STATE OF NEW YORK,
COURT OF APPEALS

2-14 Mo. No. 687

Living Springs Retreat, &c., et al.,

Appellant,

vs.

County of Putnam, et al.,

Respondents.

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the second day of July 1996

[RECEIVED JUL 8 1996]

Present, HON. JUDITH S. KAYE, Chief Judge, presiding.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied with one hundred dollars costs and necessary reproduction disbursements.

/s/ Donald M. Sheraw
Donald M. Sheraw
Clerk of the Court

STATE OF NEW YORK
COURT OF APPEALS

Donald M. Sheraw
Clerk of the Court

Clerk's Office
Albany, New York 12207

2-14 Mo. No. 687

Living Springs Retreat, &c., et al.,

Appellant,

vs.

County of Putnam, et al.,

Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

DECISION July 2, 1996

[RECEIVED JUL 8 1996]

APPENDIX B

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

___ AD2d ___

GUY JAMES MANGANO, P.J.
THOMAS R. SULLIVAN
JOHN COPERTINO
MYRIAM J. ALTMAN, JJ.

Argued - March 27, 1995

93-06126

Living Springs Retreat, etc., appellant-respondent,

v

County of Putnam, et al., respondents-respondents,
Town of Putnam Valley, et al., respondents-appellants.

Alan J. Reinach, White Plains, N.Y. (Lee Boothby of counsel), for appellant-respondent.

Richard T. Blancato, Tarrytown, N.Y., for respondents-appellants.

Granik Silverman, New City, N.Y. (David W. Silverman of counsel), for respondent-respondent Mahopac Central School District of the Towns of Carmel and Putnam Valley.

DECISION & ORDER

In an action, *inter alia,* for a judgment declaring a certain parcel of real property exempt from property taxes pursuant to Real Property Tax Law § 420-a, the plaintiff appeals from a judgment of the Supreme Court, Westchester County (Ingrassia, J.), entered February 3, 1993, which dismissed the complaint. The defendants Town of Putnam Valley,

Ronald Fiorentino, Philip W. Orlando, and Ruth A. Clause cross-appeal from the judgment.

ORDERED that the cross-appeal is dismissed on the ground that the respondents-appellants are not aggrieved thereby (*see,* CPLR 5511; *Parochial Bus Sys. v Board of Educ.,* 60 NY2d 539); and it is further,

ORDERED that the judgment is modified, on the law, by adding thereto a provision declaring that the parcel of real property in question is not exempt from real estate taxes pursuant to Real Property Tax Law § 420-a; as so modified, the judgment is affirmed; and it is further,

ORDERED that the respondents-respondents and the respondents-appellants, appearing separately and filing separate briefs, are awarded one bill of costs.

The plaintiff religious organization, which consists of lay members of the Seventh Day Adventist faith, owns and operates a self-described lifestyle/health maintenance facility on real property located in the Town of Putnam Valley. At this facility, which is opened to the general public and is attended primarily by individuals who are not members of the Seventh Day Adventist religion, there are whirlpool and sauna treatments, stop-smoking programs, video programs and slide shows on health-related topics, outdoor activities, classes in cooking, and other health-oriented activities. Guests are not required to attend or take part in any traditionally overt religious activities, such as prayer groups or services. The plaintiff's advertising for the camp does not indicate that the program is religious in nature or related to the Seventh Day Adventist faith.

The Supreme Court correctly granted judgment in favor of the defendants on the ground that the property in question is not used primarily for the plaintiff's religious purposes (*see, Matter of Symphony Space v Tishelman,* 60 NY2d 33;

Gospel Volunteers v Village of Speculator, 29 NY2d 622). Although health and physical well being are central concerns of the Seventh Day Adventist religion, in this case the health-related services are directed by the plaintiff to nonadherents of its religious principles. The fact that advertising for those services is aimed at the public as a whole supports the conclusion that the camp is not used primarily for the plaintiff's religious purposes (*see, Independent Church of Realization of Word of God v Board of Assessors of Nassau County,* 81 AD2d 579; *cf., Matter of Shrine of Our Lady of Martyrs of Auriesville v Board of Assessors of Town of Glen,* 40 AD2d 75, *affd* 33 NY2d 713; *Greater N.Y. Corp. of Seventh-Day Adventists v Town of Dover,* 29 AD2d 861). Also significant is the fact that guests are not required to participate in any prayer services, indoctrination, or similar activities (*cf., Matter of Foundation for "A Course in Miracles" v Theadore,* 172 AD2d 962).

Since the plaintiff has offered no evidence that the defendant Town of Putnam Valley has granted tax-exempt status to other properties used in a manner similar to the property in question, the plaintiff's claim of discrimination was also properly rejected by the Supreme Court. However, we modify the judgment so as to provide for declaratory relief (*see, Lanza v Wagner,* 11 NY2d 317, 334, *cert denied* 371 US 901).

MANGANO, P.J., SULLIVAN, COPERTINO and ALTMAN, JJ., concur.

ENTER:

/s/ Martin H. Brownstein
Martin H. Brownstein
Clerk

SUPREME COURT, STATE OF NEW YORK
APPELLATE DIVISION SECOND DEPT

I, MARTIN H. BROWNSTEIN, Clerk of the Appellate Division of the Supreme Court, Second Judicial Department, do hereby certify that I have compared this copy with the original filed in my office on 5/8/95 and that this copy is a correct transcription of said original.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this Court on 1/11/96.

/s/ Martin H. Brownstein

APPENDIX C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

Index No. 989/88 & 1411/89

LIVING SPRINGS RETREAT, A RELIGIOUS CORPORATION,

Plaintiff,

-against-

COUNTY OF PUTNAM, TOWN OF PUTNAM VALLEY: RONALD FIORENTINO, PHILIP W. ORLANDO and RUTH A. CLAUSE, individually and as Assessors of the Town of Putnam Valley; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY; and PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Defendants.

JUDGMENT

[FILED stamp illegible - FEB 3 1993?]

Actions having been brought by the plaintiff herein, LIVING SPRINGS RETREAT, a Religious Corporation, for a refund of real estate taxes paid for the tax years 1980 through 1986, on the grounds that the subject property is used for exempt religious purposes (Real Property Tax Law Section 420-a) and issue having been joined therein and said actions having been consolidated and having duly come on before me for trial on May 6th, May 7th, May 8th, May 9th, May 10th, and May 20, 1991, and evidence and testimony having been taken, and due deliberation having been had, and the Court having made and filed its decision herein, dated October 27, 1992.

NOW, upon reading and filing the summons and complaints herein, the answers of the respective defendants, and

upon all papers and proceedings heretofore had herein, and upon the evidence taken at trial, and upon the decision of the Court herein, it is

ORDERED, ADJUDGED AND DECREED that the plaintiff's demand for a refund of taxes paid upon the ground of religious exemption be and the same is hereby denied; and it is further

ORDERED, ADJUDGED AND DECREED that the complaints herein be and the same are in all respects dismissed; and it is further

ORDERED, ADJUDGED AND DECREED that the defendants and each of them recover costs in these proceedings, to be taxed by the Clerk of the Court and all disbursements incurred therein, as permitted by statute.

Dated: January 25, 1993
White Plains, N.Y.

ENTER,

Cl????? February 3, 1993

/s/ Angelo J. Ingrassia
~~William A. Zeck~~
~~Judicial Hearing Officer~~
ANGELO J. INGRASSIA
J.S.C.

[Stamped signature? illegible]

Signed pursuant to
??? ???? upon the
????????of office of
William A. Zeck, J.H.U.

APPENDIX D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

Index No. 989/88 & 1411/89

LIVING SPRINGS RETREAT, A RELIGIOUS CORPORATION,

Plaintiff,

-against-

COUNTY OF PUTNAM, TOWN OF PUTNAM VALLEY: RONALD FIORENTINO, PHILIP W. ORLANDO and RUTH A CLAUSE, individually and as Assessors of the Town of Putnam Valley; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY; and PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Defendants.

DECISION

[RECEIVED NOV 02 1992]

ZECK, J.H.O.

This matter was referred for trial to the undersigned, upon the consent of counsel, to hear and determine all issues.

This is an action for refund of real estate taxes paid and protested for tax years 1980-1986. Plaintiff is a religious corporation organized as a Type B Not-for-Profit-Corporation, as an organization following the religious doctrines of the Seventh Day Adventist Church, and seeks exemption from taxation on the ground that the subject property is used for exempt religious purposes (Real Property Tax Law Section 420-a). The property is located in the Town of Putnam Valley.

Defendants have asserted that this action is barred by the statute of limitations. However, the statute of limitations issues raised herein by defendants have already been determined (Dickinson, J. 12/5/89); and that determination, which held that plaintiff asserted a valid cause of action against each defendant, and that the action was not untimely, is the law of the case. Defendants have also asserted that plaintiff is bound by a prior trial decision (Burchell, J. 1/18/83) affirmed by the Appellate Division, Second Department (107 A.D.2d 665), in which the Court found that plaintiff's property was not used primarily for religious purposes and was not entitled to exemption for the years 1977, 1978, 1979; and defendants further assert that plaintiff's program has not changed since that time. However, that determination is not binding as to subsequent tax years.

Plaintiff's property consists of 38-40 acres upon which is located a church, a lifestyle or reconditioning center, seven single family residences and two cottages (used by staff and other volunteers and workers) and miscellaneous buildings (commissary, heating plant, office, etc.). The reconditioning center was founded by William Dull, an Adventist elder, and his wife. It is operated by lay members of the Seventh Day Adventist Church and is used by paying guests. The property upon which the church is located (approximately one acre) is exempt. The defendants contend that the use of the property as a reconditioning center is not a religious use but is rather a recreational or commercial use.

In order to be entitled to a tax exemption under Real Property Tax Law Section 420-a, a religious organization must meet the following three part test: (1) the group must be organized or conducted exclusively for religious purposes (2) the property must be used primarily in furtherance of that purpose and (3) no pecuniary benefit may inure to the benefit of any of its officers, members or employees, nor may it be used as a guise for profit making operations.

(*Gospel Volunteers Inc. v. Village of Speculator*, 33 AD2d 407, 410, aff'd 29 NY2d 662.) The burden is on the one claiming the exemption to prove its entitlement to exemption. (See *Long Island Foundation for Educ. and Jewish Research Inc. v. Michael*, 97 AD2d 843, 844 app. den. 62 NY2d 602.)

As to the third requirement, the Corporate Treasurer testified that the corporation had suffered substantial losses in most of the years in question and there is no evidence of any pecuniary benefit inuring to corporate officers, members or employees.

With respect to the first requirement that the corporation must be organized or conducted exclusively for religious purposes, the "Courts may not inquire into or classify the content of the doctrine, dogmas and teachings held by that body to be integral to its religion, but must accept that body's characterization of its own beliefs and activities and those of its adherents so long as that characterization is made in good faith and not a sham". (*Holy Spirit Assoc. for Unification of World Christianity v. Tax Commission*, 55 NY2d 512, 518 (1982). Where the particular purposes and activities are claimed to be other than religious, the Court may engage in only two inquiries: "Does the religious organization assert that the challenged purposes and activities are religious, and is that assertion bona fide." (*Holy Spirit Assoc. for Unification of World Christianity v. Tax Commission*, supra at 520).

Plaintiff asserts that the health aspect of their religious beliefs is integrated with and inseparable from the spiritual.

The plaintiff's Certificate of Incorporation states in pertinent part that the corporate purposes are

> "exclusively religious purposes. . . . including the diffusion of moral and religious knowledge by means of

> the support of public worship, the conduct of programs to foster, encourage, and promote health maintenance, and the building and maintenance of churches, parsonages, chapels, schools, institutes and such other religious, charitable or educational facilities as may be necessary or proper to the work of this corporation. . , and to the maintenance of all missionary undertakings, all to carry out the religious purposes of the corporation in keeping with the doctrines of the Seventh-day Adventist Church that the whole man must be ministered to, not only the spiritual but the physical and mental as well."

As testified by Harold Lance, an Adventist leader, plaintiff is a member of the Association of Services and Industries (ASI), an Adventist organization assisted by the Seventh Day Adventist Church, and is a member of Outpost Centers Inc. (OCI) which is a member organization of the ASI. Membership in these organizations is limited to those who follow the Seventh Day Adventist faith and a member of OCI must be a support ministry of the Church.

Plaintiff asserts that under Adventist religious doctrine and beliefs, the health and physical aspects of man are integrated with and inseparable from the spiritual and involve healing of the whole man. The bona fides of that assertion is supported by the testimony of plaintiff's religious witnesses as to the writings of Ellen White, who is viewed as a prophet, as well as #21 of the 27 Fundamental Beliefs, which prohibits the use of tobacco, alcohol and drugs, requires a healthful diet and abstinence from unclean food, and requires adequate exercise and rest, as the body is the temple of the holy spirit and must be cared for intelligently. (See also *Greater New York Corp. of Seventh-Day Adventists v Dover*, 29 AD2d 861, app den. 22 NY2d 893, app dismd. 23 NY2d 682.)

The primary issue to be determined then is whether plaintiff's property is used primarily in furtherance of plaintiff's religious purposes. In determining whether the property is used for exempt purposes it must appear that the use in question is "necessary or fairly incidental" to the maintenance of the property for the corporate purposes. (*Greater New York Corp. of Seventh-Day Adventists v. Town of Dover*, supra at 862.)

The plaintiff uses the property for a lifestyle or reconditioning center for guests paying a fee. A reconditioning center is defined by Harold Lance as a non-medical treatment healing program which will lead the participants to trust in a source of divine power for their healing. Its function as described by plaintiff's witnesses is as a center of health ministry evangalism for the Seventh Day Adventist faith. The reconditioning center offers health and fitness programs, including stop smoking programs, weight management, stress management, vegetarian cooking and nutrition classes, water therapy programs such as whirlpools, water massage, sauna and contact showers, nature walks in the surrounding woods and use of a lake. The center is staffed by workers who are provided housing, a small stipend and food budget. The workers reside in the housing on the property. Lance testified that there are spiritual reasons for workers and volunteers to reside together in the community. During the latter years at issue the residences were used in part by workers in a New York City health food store and vegetarian restaurant also founded by William Dull.

The reconditioning center is a facility having eight guest bedrooms, kitchen, dining room, exercise room, whirlpool, sauna and steam room. The guests are not required to be adherents of the Adventist faith and most if not all are not such adherents. William Dull testified that the program is directed at non-Adventists by design in an effort to touch the

lives of non-Adventists. The programs offered are aimed at improving the health and fitness of the guests, who pay a fee fixed by plaintiff to stay at or use the facility for days, or a week or more (although in appropriate circumstances, the fee may be reduced based on inability to pay the fixed fee). During the years in question, the fees ranged from $360 to $460 per week per guest. There is no scheduled religious program for guests, although the program essentially does not operate on the Sabbath. There is no requirement for participation in worship by the guests on the Sabbath or at any other time, because of the organization's philosophy that a person should have free choice in spiritual and religious matters.

The religious aspect of the program is based upon opportunities presented to the guests to participate in Sabbath worship, opportunities for attendance at morning prayers, prayers said by therapists before therapy if the guest is willing, spiritual discussions initiated by staff members or therapists if a guest seems receptive to such discussions, the availability of reading materials including the Bible and books authored by Ellen White, and evening programs showing slide presentations made by George Vandeman, a Seventh Day Adventist television evangalist, on entwined health and spiritual subjects. The spiritual message is aimed generally at bringing guests into touch with God and the power of God's creation in achieving a healthy body. Two former guests testified that they experienced a general spiritual awakening or awareness. One former guest, Brenda Murat, subsequently became a member of the Adventist faith and moved to Living Springs. Harold James Lance testified that this program would not exist but for the Church, but also testified that the topics in the 27 Fundamental Beliefs would be touched upon only in a very limited or casual way and that a doctrinal recitation of Adventist beliefs would not be given and would not be appropriate.

In its advertising, plaintiff advertised as a fitness and health center as demonstrated by an advertisement in the "Inns and Lodges" section of the New York Times (July 25, 1982) which ad states only "Break-Away Are you dragging or alive? Living Springs Retreat in a country setting with vegetarian meals, exercises, boating, saunas, health lectures for weight control, heart conditioning, smoking plan, stress, general conditioning". Plaintiff's brochures and newsletter distributed to the general public and prospective guests describe the facility as one for improvement of health and lifestyle based on healthful living and disease prevention. These publications are detailed in their description of health aspects but do not contain any religious aspect or content. There was testimony as to a statement at the end of another brochure stating that "Living Springs Retreat is a Non-Profit Corporation working in cooperation with Community Health Services of Seventh Day Adventists". A religious program is clearly not presented to the general public or to prospective guests.

Based upon the lack of participation of guests in Adventist religious matters, the absence of doctrinal instruction or study in the Seventh Day Adventist faith, and the focus on health improvement in plaintiff's own brochures distributed to prospective guests who pay a fee for these health-related services, the Court is constrained to find that the use of the property as a reconditioning center is primarily for health and fitness purposes rather than religious purposes. As to use of residences by staff workers and for workers in the New York City vegetarian restaurant and health food store, such use is primarily residential with respect to this property and not a use incidental to a religious use of the property.

The principal cases relied upon by plaintiff are clearly distinguishable from the plaintiff's use of its property. In *Greater New York Corp. of Seventh Day Adventists v. Dover*, 29 AD2d 861, 862 app den 22 NY2d 893, app.

dismissed 23 NY2d 682, the Court held that the property was primarily used as a spiritual retreat for adherents of the faith and the Court specifically noted that the advertising was directed strictly to adherents of the faith and that the facilities were not open to the general public but solely to adherents of the faith. In *Shrine of Our Lady of Martyrs of Auriesville v Board of Assessors*, 40 AD2d 75, the Court held that dining and hotel facilities were incidental to the primary use of the property as a shrine having religious and historical significance. The Court emphasized that while the plaintiff made an effort to attract visitors, there was no indication that it attempted to attract members of the general public to utilize the disputed facilities and that to the contrary the public advertising did not mention the existence of the disputed facilities, and the only publications in which these facilities were mentioned were in pamphlets sent to organization members and in advertisements in Catholic newspapers which the Court found not be directed to the general public but to a presumably interested class and only as incidental to the organization's main objectives. In the case of *Haptelah v. Assessor of Fallsburg*, 172 AD2d 950, the Court held that a camp used for a summer religious education program was exempt and that bungalows and trailers on the property were used exclusively by persons intimately involved with the program (caretakers, rabbis, reacher, staff, students and families) and thus were reasonably incidental to the corporation's purpose, and that the unimproved portion of the property was also exempt as used for hiking by those involved in the programs. In the *Matter of Foundation for a Course for Miracles v. Theodore*, 172 AD2d 962, app den. 78 N.Y.2d 856, the Court held that property (including classroom, dining and housing facilities) was used for religious educational purposes by an organization formed to foster spritual development through practice and study of 3 books channeled from Jesus (the Course) and was entitled to exemption.

Also of note is the case of *Independent Church of the Realization of the Word of God v. Board of Nassau*, 81 AD2d 579, cited by defendants. In that case the Court held that there was no use incidental to the plaintiff's religious functions where health care services (i.e. treatment rooms, biofeedback room, x-ray room, doctor's office, herb room, etc.), which plaintiff contended had religious significance, were advertised and open to non-adherents of plaintiff's religious principles. The Court further held that there was evidence of pecuniary benefit to third parties who rendered the health services. Both reasons were given by the Court for denial of exemption of that portion of the property. While the program at issue in that case may be very different from Living Springs, because of the obvious profit making activity, as is argued by the plaintiff, nevertheless, the advertising to non-adherents was considered a relevant factor by that Court in determining that the use was not exempt.

The distinguishing feature of the cases where exemptions were granted is that the primary use of the facility involved adherents on retreat or those involved in the study of religious principles of the faith. Advertising to the general public was found to be a relevant factor in the case of *The Shrine of Our Lady v. Auriesville*, supra, and in *Greater New York Corp. of Seventh Day Adventitsts v. Dover*, supra. In this case there is no proof that guests attend for religious reasons, for religious education or study of the Seventh Day Adventist faith, or for any reason other than the improvement of their health and fitness.

Plaintiff's claim of unequal treatment and discrimination is not supported by the evidence. Specifically, plaintiff asserts exemptions granted to a camp for underprivileged children run by Catholic Charities of New York, and a Boy Scout camp, the Methodist Church property and the Friars of Atonement property. There is no evidence that these uses

are similar to plaintiff's use of its property as a reconditioning center. As to exemption for Friars of Atonement property, the evidence is that the property is used as a retreat by the friars and monks. The evidence was that the Methodist Church property was used for religious retreats and by Boy Scout troops sponsored by the Methodist Church. There is no proof as to whether the exemption for Boy Scout camp and camp for underprivileged children are based upon religious purposes, or other exempt purposes. While the First Amendment requires neutrality among denominations in granting exemptions, there is just no credible proof of unequal treatment presented in this record, nor is there any proof that the exemption was denied based on the religious faith or beliefs followed by plaintiff's members.

Accordingly, defendant shall have judgment dismissing the complaints, together with costs and disbursements.

All motions upon which decision was reserved at trial are decided herewith.

The foregoing constitutes the findings of fact and conclusions of law of the Court.

Submit judgment on notice (22 NYCRR 202.48).

Dated: White Plains, New York
October 27th, 1992

/s/ William A. Zeck
WILLIAM A. ZECK
Judicial Hearing Officer

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CARL LODES, ESQ.
County Attorney
County of Putnam
2 County Center
Carmel, NY 10512

APPENDIX E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

Index No.

LIVING SPRINGS RETREAT, A RELIGIOUS CORPORATION

Plaintiff,

-against-

COUNTY OF PUTNAM; TOWN OF PUTNAM VALLEY; RONALD FIORENTINO, PHILIP W. ORLANDO and RUTH A. CLAUSE, INDIVIDUALLY AND AS ASSESSORS OF THE TOWN OF PUTNAM VALLEY; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY AND PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Defendants.

VERIFIED COMPLAINT

The plaintiff, as and for its verified complaint, respectfully alleges as follows:

1. At all times herein mentioned subsequent to April 21, 1980 plaintiff was a religious corporation as defined in Section 66 of the General Construction Law, duly organized pursuant to the Not-For-Profit Corporation Laws of the State of New York on or about April 21, 1980.

2. At all times herein mentioned the defendants were municipal corporations or school or fire districts, or their duly chosen agents acting as assessors and collectors in connection with the levying of real property taxes, assertedly under the laws of the State of New York.

3. At all times herein mentioned plaintiff was a self-supporting institution of the Seventh-day Adventist Church

and in good faith organized and conducted exclusively for non-profit religious purposes, or for non-profit religious, charitable or educational purposes, or for the purpose of the moral or mental improvement of men, women and children, or for two or more of such purposes, and sought to accomplish said purpose or purposes by furthering the beliefs, practices and teachings of the Seventh-day Adventist Church and faith.

4. At all times herein mentioned plaintiff has been committed to carry on spiritual, health-related religious programs for the benefit of the citizens and inhabitants of the New York metropolitan region, including the County of Putnam, in keeping with the doctrines of the Seventh-day Adventist Church that the whole man must be ministered to, not only the spiritual faculties but the physical and mental faculties as well. These spiritual, health-related religious programs have been and are conducted in accordance with fundamentalist teachings and interpretations of the Old and New Testaments of the Bible and in accordance with the writings of Ellen G. White, a Prophetess and Founder of the Seventh-day Adventist Church, who wrote and preached that man's fall from grace was literally the result of eating foods other than the permitted fruits, nuts, grains and vegetables provided by the Lord for man in the Garden of Eden, and who proclaimed in her book *Ministry of Healing* as follows: "During His ministry, Jesus devoted more time to healing the sick than to preaching", and who sought to involve the laity in furthering the work of the Seventh-day Adventist Church by means of self-supporting institutions such as plaintiff herein.

5. On February 26, 1981, the Internal Revenue Service of the United States Department of the Treasury ruled that plaintiff was an organization exempt from Federal income tax under Section 501 (c) (3) of the Internal Revenue Code and that contributions to Living Springs Retreat were deduct-

ible for purposes of the Federal income, gift and estate taxes.

6. At all times herein mentioned no officer, member or employee of plaintiff or any other person in any way received or was in any way entitled to receive any pecuniary profit from the operations of said organization except reasonable compensation for services rendered in effecting one or more of the benevolent purposes described in paragraphs 3 and 4 herein. Said organization was not organized as a guise or pretense for directly or indirectly making any pecuniary gain either for the organization itself or for its members or employees or other persons.

7. By deed dated April 21, 1980 and duly recorded in the Office of the Clerk of Putnam County, New York, plaintiff acquired title to two parcels of real property and improvements thereon, known respectively on the tax maps of the County of Putnam, State of New York, as Section 36, Block 2, Lot 14, Section 36, Block 2, Lot 14.1 and Section 62, Block 2, Lot 4, and having for a post office address Route 3, Bryant Pond Road, Putnam Valley, New York 10579.

8. Said properties and improvements thereon were acquired in trust nevertheless to be used, managed and controlled by plaintiff exclusively for carrying out thereupon one or more of the religious and/or benevolent purposes described in paragraphs 3 and 4 herein. At all times herein mentioned, all funds used to acquire the said properties and improvements thereon were contributed or loaned to plaintiff for such religious and/or benevolent purposes.

9. In 1980, upon completion of improvements to the real property in question, plaintiff began admitting participants to the various spiritual, health-related religious programs conducted on the real property in question. At all times herein mentioned the said properties and improvements thereon were thus used, managed and controlled by plaintiff

exclusively for carrying out thereupon one or more of the religious and/or benevolent purposes described in paragraph 3 and 4 herein.

10. At all times herein mentioned said properties and improvements thereon were real property owned by a corporation organized and conducted exclusively for religious, or for religious, charitable, hospital, educational, moral or mental improvement of men, women or children or cemetery purposes, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such benevolent purposes by the owning corporation.

11. Plaintiff duly made timely, verified written application to the Assessors and the Board of Assessment Review for the Town of Putnam Valley, being the agencies of defendants duly prescribed by law for such purpose, seeking to exempt from real property taxes the aforesaid parcels of real property and improvements thereon described in paragraph 7 herein.

12. Pursuant to the provisions of Sections 420, 420-a or 421 and 1308 of the Real Property Tax Law of the State of New York the aforesaid parcels of real property and improvements thereon should have been and should be exempt from real property taxation by the defendants.

13. The defendants, by their aforesaid agents, contrary to Sections 420, 420-a or 421 and 1308 of the Real Property Tax Law of the State of New York and contrary to Article 16, Section 1 of the Constitution of the State of New York and contrary to the First and Fourteenth Amendments of the Constitution of the United States unlawfully, wilfully, intentionally, deliberately and discriminatorily denied the aforesaid application and caused the real property described in paragraph 7 herein to be placed on the assessment roll of the Town of Putnam Valley and assessed for real property taxation.

14. The defendants, by their aforesaid agents, thereby unlawfully, wilfully, intentionally, deliberately and discriminatorily denied to plaintiff the free exercise of religion, the equal protection of the laws, and due process of law as guaranteed by the New York State and United States Constitutions.

15. Plaintiff built a church on the real property in question, in which services of worship were held beginning in 1980. Defendants, by their aforesaid agents, determined that a portion of the real property on which plaintiff had built the aforesaid church was exempt from real property taxation. However, said exemption was arbitrarily confined to a small area including and immediately surrounding plaintiff's church, thereby excluding the adjoining grounds together with other buildings and facilities in close proximity to the plaintiff's church which were and are an integral part of and necessary adjuncts to plaintiff's church. Defendants thereby wilfully discriminated against plaintiff in relation to other exempt organizations, to which other exempt organization defendants have granted exemptions from real property tax for a greater number and value of improvements and a greater area and value of land.

16. Defendants, by their aforesaid agents, thereupon unlawfully levied real property taxes for the years and in the amounts set forth in paragraph 17 below notwithstanding the aforesaid real property was and is exempt from real property taxation under the laws of the State of New York.

17. Plaintiff paid the said taxes with interest and penalties to the County of Putnam, Town of Putnam Valley, Putnam Valley Fire Protection District, and Mahopac Central School District, New York, as follows:

Date of Payment	Amount of Payment (Taxes, interest penalties)	Parcel Identification Number*	Tax Years Involved
12/9/92	912.96	62-2-4	1980
12/10/84	8,828.61	36-2-14	1981
12/13/85	11,630.86	36-2-14	1982
12/13/85	1,084.71	62-2-4	1982
12/2/86	40,378.31	36-2-14.1 and 62-2-4	1983
9/4/87	42,240.57	36-2-14.1 and 62-2-4	1984
	$105,076.02		

*Putnam County, New York tax map

18. Prior to the time when each of the assessments herein became final and prior to the levy of each of the taxes herein mentioned and prior to the payment of each of the said taxes, the defendants had due and timely notice of the ownership, control and exclusive use of the said parcels of real property for the purposes described in paragraphs 3 and 4 herein.

19. All of the aforesaid payments of taxes levied on the aforesaid real property were made involuntarily and under protest, and after the aforesaid taxes had become liens encumbering the aforesaid real property and while the plaintiff was subject to duress and coercion by the defendants or their agents or employees and were made as a result of said duress and coercion caused by the actions of the defendants or their agents or employees.

20. That the defendants have thereby received a sum of money, to wit $105,076.02, from plaintiff which they cannot in good conscience, law or equity retain. The cause of action hereby alleged is for the return of said sum of money unjustly and unlawfully demanded and received by defendants for real property taxes unjustly and unlawfully assessed, collected and not refunded by defendants against the aforesaid real property and improvements thereon.

WHEREFORE, plaintiffs request judgment of this Court as follows:

1. Declaring the aforesaid parcels of real property and improvements thereon in the Town of Putnam Valley, New York, designated as Section 62, Block [RUNS OFF PAGE, something missing] exempt at all times herein mentioned from tax by the defendants herein;

2. Declaring the assessments and taxes heretofore levied upon the aforesaid parcels of real property for the years 1980, 1981, 1982, 1983, 1984, 1985 and 1986 to be illegal, unconstitutional and void and annulled and cancelled of record;

3. Declaring the aforesaid parcels of real property and improvements thereon released from any charge, lien or claim with respect to said taxes and removing the cloud upon the title of plaintiff Living Springs Retreat to said premises;

4. Refunding to plaintiffs all of the aforesaid taxes, interest and penalties in the amount and to the extent paid for years 1980, 1981, 1982, 1983, 1984, 1985 and 1986, with interest thereon;

5. Directing the entry of judgment in favor of plaintiffs and against defendants for the sum of $105,076.02 together with interest and the costs of this action; and

6. For such other and further relief as to the Court may seem just and proper.

Dated: White Plains, New York
May 31, 1988

/s/ William P. Dull
William P. Dull
Director of Plaintiff
Living Springs Retreat

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

LIVING SPRINGS RETREAT, A RELIGIOUS CORPORATION

Plaintiff,

-against-

COUNTY OF PUTNAM; TOWN OF PUTNAM VALLEY; RONALD FIORENTINO, PHILIP W. ORLANDO and RUTH A. CLAUSE, INDIVIDUALLY AND AS ASSESSORS OF THE TOWN OF PUTNAM VALLEY; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY AND PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Defendants.

VERIFICATION

William P. Dull, being duly sworn, deposes and says:

I am the Director of Living Springs Retreat, plaintiff in the within action; I have read the foregoing Verified Complaint and know the contents thereof; and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This verification is made by me because the above party is a not-for-profit corporation and I am an officer thereof. The grounds of my belief as to all matters not stated upon my own knowledge are my employment during most of the past 10 years as director and spiritual leader of plaintiff Living Springs Retreat.

Dated: White Plains, New York
May 31, 1988

/s/ William P. Dull
William P. Dull

/s/ signature illegible
Notary Public

APPENDIX F

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

Index No.

LIVING SPRINGS RETREAT, A RELIGIOUS CORPORATION,

Plaintiff,

-against-

COUNTY OF PUTNAM; TOWN OF PUTNAM VALLEY; RONALD FIORENTINO, PHILIP W. ORLANDO and RUTH A. CLAUSE, INDIVIDUALLY AND AS ASSESSORS OF THE TOWN OF PUTNAM VALLEY; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY AND PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Defendants.

VERIFIED COMPLAINT

The plaintiff, as and for its verified complaint, respectfully alleges as follows:

1. At all times herein mentioned plaintiff was a religious corporation as defined in Section 66 of the General Construction Law, duly organized pursuant to the Not-For-Profit Corporation Laws of the State of New York on or about April 21, 1980.

2. At all times herein mentioned the defendants were municipal corporations or school or fire districts, or their duly chosen agents acting as assessors and collectors in connection with the levying of real property taxes, assertedly under the laws of the State of New York.

3. At all times herein mentioned plaintiff was a self-supporting institution of the Seventh-day Adventist Church

and in good faith organized and conducted exclusively for non-profit religious purposes, or for non-profit religious, charitable or educational purposes, or for the purpose of the moral or mental improvement of men, women and children, or for two or more of such purposes, and sought to accomplish said purpose or purposes by furthering the beliefs, practices and teachings of the Seventh-day Adventist Church and faith.

4. At all times herein mentioned plaintiff has been committed to carry on spiritual, health-related religious programs for the benefit of the citizens and inhabitants of the New York metropolitan region, including the County of Putnam, in keeping with the doctrines of the Seventh-day Adventist Church that the whole man must be ministered to, not only the spiritual faculties but the physical and mental faculties as well. These spiritual, health-related religious programs have been and are conducted in accordance with fundamentalist teachings and interpretations of the Old and New Testaments of the Bible and in accordance with the writings of Ellen G. White, a Prophetess and Founder of the Seventh-day Adventist Church, who wrote and preached that man's fall from grace was literally the result of eating foods other than the permitted fruits, nuts and grains provided by the Lord for man in the Garden of Eden, and who proclaimed in her book *Ministry of Healing* as follows: "During His ministry, Jesus devoted more time to healing the sick than to preaching", and who sought to involve the laity in furthering the work of the Seventh-day Adventist Church by means of self-supporting institutions such as plaintiff herein.

5. On February 26, 1981, the Internal Revenue Service of the United States Department of the Treasury ruled that plaintiff was an organization exempt from Federal income tax under Section 501 (c) (3) of the Internal Revenue Code

and that contributions to Living Springs Retreat were deductible for purposes of the Federal income, gift and estate taxes.

6. At all times herein mentioned no officer, member or employee of plaintiff or any other person in any way received or was in any way entitled to receive any pecuniary profit from the operations of said organization except reasonable compensation for services rendered in effecting one or more of the benevolent purposes described in paragraphs 3 and 4 herein. Said organization was not organized as a guise or pretense for directly or indirectly making any pecuniary gain either for the organization itself or for its members or employees or other persons.

7. By deed dated April 21, 1980 and duly recorded in the Office of the Clerk of Putnam County, New York, plaintiff acquired title to two parcels of real property and improvements thereon, known respectively on the tax maps of the County of Putnam, State of New York, as Section 36, Block 2, Lot 14, Section 36, Block 2, Lot 14.1 and Section 62, Block 2, Lot 4, and having for a post office address Route 3, Bryant Pond Road, Putnam Valley, New York 10579.

8. Said properties and improvements thereon were acquired and continue to be owned by plaintiff in trust nevertheless to be used, managed and controlled by plaintiff exclusively for carrying out thereupon one or more of the religious and/or benevolent purposes described in paragraphs 3 and 4 herein. At all times herein mentioned, all funds used to acquire the said properties and improvements thereon were contributed or loaned to plaintiff for such religious and/or benevolent purposes.

9. In 1980, upon completion of improvements to the real property in question, plaintiff began admitting participants to the various spiritual, health-related religious programs

conducted on the real property in question. At all times since then the said properties and improvements thereon were thus used, managed and controlled by plaintiff exclusively for carrying out thereupon one or more of the religious and/or benevolent purposes described in paragraphs 3 and 4 herein.

10. At all times herein mentioned said properties and improvements thereon were real property owned by a corporation organized and conducted exclusively for religious, or for religious, charitable, hospital, educational, moral or mental improvement of men, women or children or cemetery purposes, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such benevolent purposes by the owning corporation.

11. Plaintiff duly made timely, verified written application to the Assessors and the Board of Assessment Review for the Town of Putnam Valley, being the agencies of defendants duly prescribed by law for such purpose, seeking to exempt from real property taxes the aforesaid parcels of real property and improvements thereon described in paragraph 7 herein.

12. Pursuant to the provisions of Section 420, 420-a or 421 and 1308 of the Real Property Tax Law of the State of New York the aforesaid parcels of real property and improvements thereon should have been and should be exempt from real property taxation by the defendants.

13. The defendants, by their aforesaid agents, contrary to Sections 420, 420-a or 421 and 1308 of the Real Property Tax Law of the State of New York and contrary to Article 16, Section 1 of the Constitution of the State of New York and contrary to the First and Fourteenth Amendments of the Constitution of the United States unlawfully, wilfully, intentionally, deliberately and discriminatorily denied the aforesaid application and caused the real property described in paragraph 7 herein to be placed on the assessment roll of the

Town of Putnam Valley and assessed for real property taxation.

14. The defendants, by their aforesaid agents, thereby unlawfully, wilfully, intentionally, deliberately and discriminatorily denied to plaintiff the free exercise of religion, freedom from the establishment of any religion, the equal protection of the laws, and due process of law as guaranteed by the New York State and United States Constitutions.

15. Plaintiff built a church on the real property in question, in which services of worship were held beginning in 1980. Defendants, by their aforesaid agents, determined that a portion of the real property on which plaintiff had built the aforesaid church was exempt from real property taxation. However, said exemption was arbitrarily confined to a small area including and immediately surrounding plaintiff's church, thereby excluding the adjoining grounds together with other buildings and facilities in close proximity to the plaintiff's church which were and are an integral part of and necessary adjuncts to plaintiff's church. Defendants thereby wilfully discriminated against plaintiff in relation to other exempt organizations, to which other exempt organization defendants have granted exemptions from real property tax for all real property for which exemption was requested and for a greater number and value of improvements and a greater area and value of land.

16. Defendants, by their aforesaid agents, thereupon unlawfully levied real property taxes for the years and in the amounts set forth in paragraph 17 below notwithstanding the aforesaid real property was and is exempt from real property taxation under the laws of the State of New York.

17. Plaintiff paid the said taxes with interest and penalties to the defendants County of Putnam, Town of Putnam Valley, Putnam Valley Fire Protection District, and Mahopac Central School District, New York as follows:

Date of Payment	Amount of Payment (Taxes, interest, penalties)	Parcel Identification Number*	Tax Years Involved
10/27/88	$47,029.80	36-2-14.1 and 62-2-4	1985
4/28/89	47,388.15	36-2-14.1 and 62-2-4	1986
	$94,417.95		

*Putnam County, New York tax map

18. Prior to the time when each of the assessments herein became final and prior to the levy of each of the taxes herein mentioned and prior to the payment of each of the said taxes, the defendants had due and timely notice of the ownership, control and exclusive use of the said parcels of real property for the purposes described in paragraphs 3 and 4 herein.

19. All of the aforesaid payments of taxes levied on the aforesaid real property were made involuntarily and under protest, and after the aforesaid taxes had become liens encumbering the aforesaid real property and while the plaintiff was subject to duress and coercion by the defendants or their agents or employees and were made as a result of said duress and coercion caused by the actions of the defendants or their agents or employees.

20. That the defendants have thereby received a sum of money, to wit $94,417.95, from plaintiff which they cannot in good conscience, law or equity retain. The cause of action hereby alleged is for the return of said sum of money unjustly and unlawfully demanded and received by defendants for real property taxes unjustly and unlawfully assessed, collected and not refunded by defendants against the aforesaid real property and improvements thereon.

WHEREFORE, plaintiffs request judgment of this Court as follows:

1. Holding the assessments and taxes heretofore levied upon the aforesaid parcels of real property for the years 1985 and 1986 to be illegal, unconstitutional and void and annulled and cancelled of record; and refunding to plaintiffs all of the aforesaid taxes, interest and penalties in the amount and to the extent paid for years 1985 and 1986, with interest thereon;
2. Directing the entry of judgment in favor of plaintiffs and against defendants for the sum $94,417.95 together with interest and the costs of this action; and
3. For such other and further relief as to the Court may seem just and proper.

Dated: September 27, 1989
White Plains, New York

APPENDIX G

NEW YORK STATE COURT OF APPEALS

Index Nos. 989/88 & 1411/89
(Putnam County Clerk)

Case No. 93-06126
(Appellate Division
Second Judicial Department)

LIVING SPRINGS RETREAT, A RELIGIOUS CORPORATION,

Plaintiff-Appellant,

-against-

COUNTY OF PUTNAM, TOWN OF PUTNAM VALLEY; RONALD FIORENTINO; PHILIP W. ORLANDO; and RUTH A. CLAUSE, individually and as Assessors of the Town of Putnam Valley; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL and PUTNAM VALLEY; and PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Defendants-Respondents.

NOTICE OF MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

SIRS:

PLEASE TAKE NOTE that plaintiff-appellant Living Springs Retreat, a religious corporation, upon the annexed Affidavit of Alan J. Reinach, sworn to the 29th day of April, 1996, upon the Brief and Record submitted herewith from the Appellate Division, Second Judicial Department, upon the Decision & Order of the Appellate Division, Second Judicial Department dated May 8, 1995, and upon the Memorandum of Law submitted herewith, and upon all other papers and proceedings in this case, the undersigned

will move this Court at the Court of Appeals Hall, Albany, New York, on the 20th day of May, 1996, or the next motion date thereafter in the New York State Court of Appeals for an order granting to the movant leave to appeal to this Court from an Order of the Appellate Division of the Supreme Court, Second Judicial Department, dated May 8, 1995, affirming the Judgment dated January 25, 1993, of Justice Angelo J. Ingrassia, which was entered in the office of the Putnam County Clerk on February 11, 1993, which Judgment dismissed plaintiff's complaints in their entirety, and from the decision of William A. Zeck, Judicial Hearing Officer, dated October 27, 1992, for an order allowing an appeal to be taken by the plaintiff-appellant to this court from an order of unanimous affirmance, pursuant to CPLR 5062(a)(1), and for such other relief in the circumstances as may be just and proper. The grounds upon which such leave is requested are set forth in detail in the attached memorandum of law and concisely stated are as follows:

1. The appeal is required in the interests of substantial justice.

2. The decision is in conflict with prior decisions of this court and more particularly:

> Contrary to this Court's decision in *Holy Spirit Ass'n for Unification of World Christianity v. Tax Comm'n,* 55 N.Y.2d 515 (1982), did the courts below wrongly find the primary use of Living Springs' property *not* to be religious?

3. A question of law is presented which is of public importance as it involves tax exemption of religious corporations provided for in New York's statutory and constitutional provisions and implicates the First and Fourteenth

Amendments to the United States Constitution and more particularly:

> Did the Appellate Division err and violate appellant's First Amendment rights when it found that the real property in question was not used primarily for a religious purpose simply because (a) its program is directed to nonadherents to the faith; (b) advertising is directed at the general public; and (c) participants in the program are not required to participate in religious services, indoctrination, or similar activities?

4. The decisions of the courts below interpreting tax exemptions for religious organizations under New York's statutory and constitutional provisions, if left to stand, would violate the Religion Clauses of the First Amendment to the United States Constitution, and more particularly:

> Does the lower courts' application of the "primary use" prong of the tripartite test for tax exemption under Section 420-a of the Real Property Tax Law violate the no establishment and equal protection components of the First Amendment?

5. Respondents' tax exempt status determination runs afoul of the neutrality and equal protection requirements guaranteed in the First and Fourteenth Amendments to the United States Constitution, and more particularly:

> Did the courts below err with regard to Living Springs' unequal treatment claim when they focused only on whether evidence proved other property was used as a reconditioning center?

6. Each of the above-stated issues are important not only to plaintiff-appellant but to all religious organizations owning real property within the State of New York. The

decision below, if permitted to stand, would introduce confusion into this body of law.

7. Each of the above questions presented involve novel issues of law.

Dated: 4/29/96

Respectfully submitted,

/s/ Alan J. Reinach
ALAN J. REINACH
LEWIS P. TRIPPETT
2975 Westchester Avenue
Suite 207
Purchase, New York 10577
(914) 253-8250

APPENDIX G

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

September 16, 1996

Mr. Lee Boothby
4545 42nd Street, N.W.
Suite 201
Washington, DC 20016

Re: Living Springs Retreat
v. County of Putnam, et al.
Application No. A-197

Dear Mr. Boothby:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Ginsberg, who on September 16, 1996, extended the time to and including October 14, 1996.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By /s/ Jeffrey D. Atkins
Jeffrey D. Atkins
Assistant Clerk

NOTIFICATION LIST

Mr. Lee Boothby
4545 42nd Street, N.W.
Suite 201
Washington, DC 20016

Mr. Carl F. Lodes
County Attorney
2 County Center
Carmel, NY 10512

Mr. Richard T. Blancato
360 South Broadway
Tarrytown, NY 10591

Mr. Granik Silverman
254 South Main Street
P.O. Box 370
New City, NY 10956

Clerk
Appellate Division, Supreme Court of
New York, Second Judicial Dept.
45 Monroe Place
Brooklyn, NY 11201

Supreme Court, U.S.
FILED
NOV 12 1996
CLERK

(2)

No. 96-593

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

LIVING SPRINGS RETREAT, a Religious Corporation,

Petitioner,

vs.

(For Continuation of Caption See Reverse Side of Cover)

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK SUPREME COURT, APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

BRIEF OF RESPONDENT MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DAVID W. SILVERMAN
Counsel of Record
GRANIK SILVERMAN CAMPBELL & HEKKER
254 South Main Street
New City, New York 10956-0370
(914) 634-8822

Counsel for Respondent Mahopac Central School District of the Towns of Carmel and Putnam Valley

10 pp

COUNTY OF PUTNAM; TOWN OF PUTNAM VALLEY; RONALD FIORENTINO; PHILIP W. ORLANDO; and RUTH A. CLAUSE, individually and as Assessors of the Town of Putnam Valley; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY; and PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Respondents.

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BRIEF OF RESPONDENT MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PRELIMINARY STATEMENT

The complaint of Living Springs Retreat, Petitioner herein, in the allegations set forth in paragraphs "13" and "14" (P. 23a-24a),[1] charges Respondent Mahopac Central School District of the Town of Carmel and Putnam Valley (the "School District") with violations of Article 16, Section 1 of the Constitution of the State of New York, and of the First and Fourteenth Amendments of the Constitution of the United States. Petitioner alleges that the School District "unlawfully, wilfully, intentionally, deliberately and discriminatorily denied the aforesaid application [to remove Petitioner's property from the tax roll] . . .," and further alleges that the School District "unlawfully, wilfully, intentionally, deliberately and discriminatorily denied to [Petitioner] the free exercise of religion, . . .".

The record in the court below is devoid of any testimony or evidence which would establish these allegations of the complaint against the School District.

---

[1] Refers to pages in the Appendix to the Petition for Writ of Certiorari.

POINT I

THE SCHOOL DISTRICT IS NOT A PROPER PARTY.

Respondent School District annually levies taxes upon the various property owners within the School District. The tax roll upon which the taxes are based, setting forth the evaluation of all properties subject to tax, is, however, prepared by the assessors of the Towns wherein the School District is located. For purposes of this application for writ of certiorari, the tax roll involved is that prepared by the assessor of the Town of Putnam Valley.

Subdivision 2 of § 1302 of the New York Real Property Tax Law (RPTL) provides that town assessors shall prepare for each school district within such town a duplicate of that part of the assessment roll applying to such school district. RPTL § 1302 (McKinney 1989). This statute has been strictly interpreted by the New York courts. In District 3 IUE Housing Development v. John P. Buckley, as City Manager, 74 Misc.2d 1078, 347 N.Y.S.2d 125 (1973), the court held that:

> . . . the school district must base the taxes levied by it on the city's assessment rolls, it may not question the assessment so fixed by the city, nor the method of arriving at the assessed valuation, nor may it

> raise any valid objection to the granting of any exemption . . .

347 N.Y.S.2d at 128.

This position was followed in Xerox Corporation v. The Town of Webster, 131 Misc.2d 817, 502 N.Y.S.2d at 381.

The Putnam Valley Assessor's Office is responsible for generating the assessment roll. The School District, just as any other school district, then uses the assessment roll provided to it to levy taxes. The School District has no authority under the law to prepare its own assessment roll or to make determinations as to which, if any, property should be exempted from paying taxes. Based upon the case law cited above, it is clear that the School District is not a proper party to an action in which the central question is whether or not a property owner is entitled to an exemption from the tax assessment roll.

In its appeal, however, Petitioner is also seeking the return of all monies it has previously paid in school taxes to the School District. The School District believes that Petitioner is not entitled to a return of the taxes previously assessed for the simple reason that Petitioner is not entitled to an exemption from taxation. However, even were the Court to determine that Petitioner is entitled to the return of the money previously assessed in taxes,

the School District would still not be a necessary party to the case that led to such a determination. Under RPTL § 726, subsection 1(c):

> [a]ny final order in a proceeding under article 7 of this chapter, which orders or directs the correction or striking of an assessment appearing on that portion of a city, town or county assessment roll applicable to a school district, shall be binding on such school district. Any amount of taxes of such school district at any time collected upon such assessment in excess of the amount which would have been paid had such assessment been made as determined by such order, shall be refunded by the school authorities of such school district. . .

RPTL § 726.

The School District, therefore, is not a proper party to this action. If Petitioner is determined to be entitled to a return of the money it previously paid in school taxes, the School District will be bound by the court order; it does not have the power to contest such a court order; it will have no choice but to refund the taxes previously paid to Petitioner.

POINT II

THE EXEMPTION WAS PROPERLY DENIED AND THE APPLICATION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

By reason of its joinder as a party defendant, the School District was forced to take an active role in the defense of the claim of Living Springs Retreat for exemption.

In its opposition to the grant of a writ of certiorari, the School District urges upon this Court that the issue is whether the use of the property for which tax exemption has been denied was primarily in furtherance of a religious purpose. The issue is not whether Petitioner, Living Springs Retreat, fills the broad definition of a religious organization.

It is submitted that the findings made by the courts below clearly support and establish that the use of the property was not in furtherance of a religious purpose. It would serve no purpose to recapitulate at this point the decisions of the courts below based on those findings. They clearly and forcefully set forth the basis upon which the claim for exemption was denied.

CONCLUSION

It is respectfully submitted that Petitioner's application for writ of certiorari should be denied.

Dated: New City, New York
November 8, 1996

Respectfully submitted,

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& HEKKER
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(17) No. Supreme Court, U.S. FILED

In 96 593 NOV 15 1996

Supreme Court of The United States

October Term, 1996

LIVING SPRINGS RETREAT, A Religious Corporation,

Petitioner,

v.

COUNTY OF PUTNAM; TOWN OF PUTNAM VALLEY; RONALD FIORENTINO; PHILIP W. ORLANDO; and RUTH A. CLAUSE, individually and as Assessors of the Town of Putnam Valley; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY; and PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Respondents.

On Petition for a Writ of Certiorari to the New York Supreme Court, Appellate Division: Second Judicial Department

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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23 PP

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Whether non-compliance with a state statute of limitations is a sufficient and independent state ground which bars further review?

2. Where Courts applied reasonable guidelines to determine whether operations of business advanced substantial non-exempt purpose and did not inquire into merits of particular religious doctrine, did Court violate First and Fourteenth Amendments rights of religious organization which sought tax exempt status?

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FACTUAL STATEMENT

The issues presented before the Courts below were threefold: (1) Whether the actions were barred by the four-month statute of limitations? (2) Whether the real property of petitioner was used exclusively or "primarily" for religious purposes which is one of the standards under Section 420-a of the New York Real Property Tax Law for tax exemption? (The other standards were met by the petitioner and were not in dispute); and (3) Whether the respondent tax assessors had unconstitutionally discriminated against petitioner by granting tax exemptions to other groups or entities?

A. NEW YORK REAL PROPERTY TAX LAW SECTION 420-a.

In order to be entitled to a tax exemption under Section 420-a, a religious organization must meet the following three part test:

(1) the group must be organized or conducted exclusively for religious purposes (2) the property must be used exclusively (primarily) in furtherance of that purpose and (3) no pecuniary benefit may inure to the benefit of any of its officers, members or employees, nor may it be used as a guide for profit making operations. Parts (1) and (3) are not in issue in this case. The only issue is whether the petitioner's real property was used primarily for religious purposes.

B. THE STATUTE OF LIMITATIONS ISSUE.

The first action in this consolidated case relates to the assessment rolls for 1980 through 1984. The rolls in each year were final on July 1st, and therefore Court review of the Board of Assessors' determination can be had after said

date. The petitioner served his complaint on the Town on June 23, 1988. Thus more than eight years expired since the roll became final in 1980; seven years since the roll became final in 1981; six years since the roll became final in 1982; five years since the roll became final in 1983; and four years since the roll became final in 1994. The second complaint relates to assessment rolls for the years 1985 and 1986, and was served on October 10, 1989. The petitioner argues that the six year statute of limitations is applicable. Even assuming arguendo that the petitioner is correct, the years 1980, 1981 and 1982 are beyond the six year statute of limitations. However, the respondents claim that a four (4) month statute of limitations has been held applicable to these kind of cases by New York's highest court, the Court of Appeals. All of the years at issue would then be time-barred.

C. THE LIVING SPRINGS RETREAT PROPERTY.

The subject property consists of between 38 to 40 acres of land with various buildings and improvements. The primary buildings on the property consist of a large reconditioning center or health spa, and a number of one-family dwellings and cottages which have been renovated and in which live approximately nine (9) families and other permanent volunteers or staff. (A-803)[1]. There are other buildings which house an office, woodworking shed, commissary, heating plant and other miscellaneous uses. (A-803). There is also a church on the property. However, the church and the land upon which it sits (approximately 1 acre), was granted a full exemption and therefore it is not an issue in this case. Together these buildings and the land fronting on Bryant Pond are called Living Springs Retreat.

---

[1] References are to the Joint Appendix filed in the Appellate Division containing the Record below.

Living Springs Retreat is a self-described lifestyle center operated by law members of the Seventh Day Adventist Church, who are living a communal type existence. The lay members devote themselves to following the tenets and lifestyle of the Seventh Day Adventist Church, but it must be noted that the said church is not the owner of the property; has no control over the activities conducted on the property; and is not involved in any way with daily supervision. (A-706). No ordained minister of the Church resides on the property or supervises the programs. (A-709).

There are two types of persons who use the property, i.e., "staff or volunteers" and "guests". The "staff or volunteers" consist of the lay members of the Seventh Day Adventist Church who reside in the one-family dwellings and cottages on the property. (A-721). They conduct the conditioning and health related programs, grow the farm products, and operate the vegetarian restaurant and food store owned by the petitioner in New York City. (A-729). The "guests" are members of the general public who attend the health related programs at the reconditioning center. (A-717, A-718). They may or may not be members of the Seventh-Day Adventist Church. (A-718). In fact, most ar not members. (A-735). They do not attend these programs for religious purposes, but rather for improvement of their health and fitness. The types of programs they attend are non-smoking clinics; stress management programs; heart disease prevention; weight management; and nutrition and cooking classes. (SA-31 - 34). The "guests" attend these programs as a result of newspaper advertisements and brochures which are paid for by the petitioner. (A-1092). For example, on July 25, 1982, the petitioner advertised in the "Small Inns & Lodges" section of the Sunday New York Times as follows: "BREAK AWAY". ARE YOU DRAGGING OR ARE YOU ALIVE? Living Springs Retreat in a country setting with vegetarian meals, exercise, boating, saunas, health lectures

for weight control, heart conditioning, smoking plan, stress, general conditioning. Special 2 day package for $ 99, 1 week for $ 360. Call 914-526-2800" (A-1092). There is no mention of any sort of religious activities in these advertisements. Similarly the brochures sent to potential "guests" describe the programs, facilities and activities in great detail, but not once is religion mentioned. There is no requirement that the guest even state what religion he or she is a member of in the application forms. The fees paid by the "guests" run from $ 360 per week to approximately $ 460 per week in the later years under review. (A-701).

The "guests" stay in the building known as the reconditioning center, which contains bedrooms, a dining room and exercise room, whirlpools, saunas, and a Russian steam room. (A-719 - 720). They do not attend the morning devotions, which are attended by staff only. (A-737 - 738). While the days activities are started out with a prayer, and the staff offers to pray with the "guests", the "guests" are not required to pray. (A-412 - 413). The "guests" are not required to participate in any religious activities, although they are invited to attend Friday evening and Sabbath devotions in the church. (A-739). Appellants claimed during the trial that the activities and lectures were intertwined with the religion, such as to point out the wonders of God's creation. However, when petitioner's witness Harold James Lance, President of Outpost Centers, Inc. testified, he made it clear that the basic tenets of the Seventh-Day Adventist Religion would be touched upon only in a very limited or casual way. (A-276). He further stated- "I would feel that any kind of doctrinal recitation of the particular beliefs of the Seventh-Day Adventist Church would not be given and would be inappropriate". (A-276,277). In fact, the program is such that it would not be offensive to any religious faith, such as Jewish, Catholic or Protestant. (A-413). It bears emphasis, that the petitioner's programs could have been

expressly advertised as religious, and could have been taught as Seventh-Day Adventist lectures, but they were not. It is obvious that the petitioners wanted to compete with the other health retreats or spas, and would have difficulty obtaining paying "guests" if it were presented as a religious program.

The program at the reconditioning center is a commercial enterprise open to the general public. It is very similar to the program offered by the Pawling Health Manor, a commercial enterprise. (A-1093). The Pawling Health Manor is a health retreat or spa which presents health lectures; has daily sessions in meditation and relaxing; vegetarian food demonstrations; non-smoking; weight reduction; and other activities. (A-1093). Neal Clayton Wilson, senior statesman for the Seventh-Day Adventist Church, agreed that the activities are certainly similar to those advertised by petitioner. (A-125).

The reconditioning center program, when considered by itself, including all the expenses attributable to it, makes a profit. For example, for the year ending June 30, 1986, the Treasurer of the petitioner prepared worksheets showing such an allocation between the reconditioning center and the balance of the property. The total expenses allocable to the reconditioning center are $ 91,133. The total income from the center was $108,892, leaving a profit of $ 17,759. This is using the Treasurer's own allocations, except for depreciation and taxes. The same exercise can be done for each of the years at issue and a profit would be shown, if considering the reconditioning center alone.

Another aspect of this case relates to the remaining use of the subject property. Heather Erho, Treasurer of the petitioner testified that approximately one-third to one-half of the staff or volunteers work in the reconditioning center. (A-211). The remaining staff or volunteers work in the

restaurant or health food store operated by Living Springs Retreat in New York City. (A-211). This restaurant is vegetarian, which serves approximately three hundred customers a day for breakfast and lunch. (A-730). In fact, the restaurant now serves dinner and requires two shifts of workers. (A-733). The store is a health food store open to the general public. The building in New York City is not exempt from real estate taxes. If would be very difficult to claim that this commercial enterprise is generically religious. Yet the plaintiff is asking the Town of Putnam Valley to exempt the homes in which these same workers reside from the payment of taxes. The use of these homes is not religious in nature. It is no different from any other communal type sharing arrangement.

It is the commercial nature of the vegetarian restaurant, health food store and the program at the reconditioning center that separates them from religious activities. Any spiritual or religious evangelism is clearly incidental to the commercial enterprises. The fact that they are operated by religious lay people and are consistent with Seventh-Day Adventist principles does not change their nature.

D. THE TRIAL COURT DECISION.

The trial of this matter was heard before Hon. William A. Zeck, Judicial Hearing Officer of the New York Supreme Court.

Judge Zeck held that the issue relating to this action being time barred by the four months statute of limitations, had already been determined by Judge Dickinson on December 5, 1989, citing *Niagara Mohawk v. Troy School District*, 59 N.Y.2d 262 (1983). This was an action for monies had and received, claiming that the taxing authority

had exceeded its constitutional spending limit. Judge Zeck ruled that Judge Dickinson's decision was the law of the case. However, Judge Zeck ignored a decision which was rendered by the Court of Appeals subsequent to Judge Dickinson's decision and which was squarely on point. The case is *Kahal Bnei v. Fallsburgh*, 78 N.Y.2d 194 (1991). In said case, Court distinguished the situations applicable to *Niagara Mohawk* from cases such as the case at bar, and held that the four month statute of limitations applied.

The remaining issue determined by Judge Zeck was whether the petitioner was entitled to a religious tax exemption under Real Property Tax Law Section 420-a. The issue in this case relates to the requirement that the property must be used exclusively or primarily in furtherance of religious purposes. In this regard, Judge Zeck held as follows:

> "Based upon the lack of participation of guests in Adventist religious matters, the absence of doctrinal instruction or study in the Seventh Day Adventist faith, and the focus on health improvement in plaintiff's own brochures distributed to prospective guests who pay a fee for these health-related services, the Court is constrained to find that the use of the property as a reconditioning center is primarily for health and fitness purposes rather than religious purposes. As to use of residences by staff workers and for workers in the New York City vegetarian restaurant and health food store, such use if primarily residential with respect to this property and not a use incidental to a religious use of the property."

Judge Zeck further stated as follows:

> "The distinguishing feature of the cases where exemptions were granted is that the primary use of the facility involved adherents on retreat or those involved in the study of religious principles of the faith. Advertising to the general public was found to be relevant factor in the case of *The Shrine of Our Lady v. Auriesville*, *supra*, and in *Greater New York Corp. of Seventh Day Adventists v. Dover*, *supra*. In this case there is no proof that guests attend for religious reasons, for religious education or study of the Seventh Day Adventist faith, or for any reason other than the improvement of their health and fitness."

Finally, the Court held that Petitioner's claim of unequal treatment and discrimination was not supported by the evidence.

Accordingly, judgment was granted dismissing the complaint.

E. THE APPELLATE DIVISION DECISION.

At the outset, the Appellate Division dismissed the respondents' cross-appeal relating to the statute of limitations on the ground that the respondents are not aggrieved thereby, having won in the Court below on other grounds.

Referring to the lifestyle/health maintenance facility, they noted as follows:

> "...At this facility, which is opened to the general public and is attended primarily by individuals who are not members of the

> Seventh-Day Adventist religion, there are whirlpool and sauna treatments, stop-smoking programs, video programs and slide shows on health related topics, outdoor activities, classes in cooking, and other health related activities. Guests are not required to attend or take part in any traditionally overt religious activities, such as prayer groups or services. The plaintiff's advertising for the camp does not indicate that the program is religious in nature or related to the Seventh-Day Adventist Faith" [2]. 4a.

The Appellate Division also held that the Supreme Court correctly held that the property in question is not used primarily for petitioner's religious purposes. 4a.

The Court also stated that

> "...Although health and physical well being are central concerns of the Seventh Day Adventist religion, in this case the health related services are directed by the plaintiff to nonadherents of its religious principles. The fact that advertising for those services is aimed at the public as a whole supports the conclusion that the camp is not used primarily for the plaintiff's religious purposes...(citing cases)". 5a.

The Appellate Division stated further in support of its

---

[2] Reference is to Appendix to Petition For Writ of Certiorari.

position that:

> "...Also significant is the fact that guests are not required to participate in any prayer services, indoctrination, or similar activities..." 5a.

Finally, the Appellate Division found that the petitioner offered no evidence that the Town granted tax-exempt status to other properties used in a similar manner to the property in question and the claim of discrimination was rejected. 5a.

REASONS FOR DENYING THE WRIT

It has been long held that imposition of taxes on real property owned by religious and charitable organizations does not violate the free exercise and establishment clauses of the First Amendment. *Gibbons v. District of Columbia*, (1886) 116 U.S. 404.

Far from applying subjective discretion as petitioner suggests, the State of New York has statutory guidelines which must be applied in order to determine which an applicant is entitled to a tax exemption. In this case, the petitioner failed to comply with the "primary use" test. Respondents did not delve into, or examine, or pass upon, the creed and theology of the Seventh Day Adventist Church. They merely made a factual determination that the primary use of the property was not a religious use.

I. NON-COMPLIANCE WITH A STATE STATUTE OF LIMITATIONS IS A SUFFICIENT AND INDEPENDENT STATE GROUND WHICH BARS FURTHER REVIEW.

It is the duty of this Court to ascertain whether a nonfederal ground of decision independently and adequately supports a judgment so as to preclude Supreme Court review. Noncompliance with a state statute of limitations is a sufficient and independent state ground which bars further review. This is true even if not discussed in the opinion. Such an issue can bar review if it appears that it offers an independent and adequate ground for decision. *Johnson v. Risk*, (1890), 137 U.S. 300; *Paschall v. Christie-Stewart, Inc.*, (1973), 414 U.S. 100, *reh den* 414 U.S. 1138, and conformed to (Okla.) 544 P2d 505, *Cert. den* 426 U.S. 935.

It is the respondents' position that the four (4) month statute of limitations applies to these cases. The petitioner contends that a six (6) year statute of limitations applies. Even if the petitioner's argument were correct, the years 1980, 1981 and 1982 must be dismissed as they were not brought within six years from the time that the assessments in said years became final. In any event, the New York Court of Appeals, in a case directly on point, *Kahal Bnei v. Fallsburg*, (1991) 78 N.Y.2d 194, *mot. for reargument den.* 78 N.Y.2d 1008, held that a four (4) month statute of limitations applies. In *Kahal*, the plaintiff brought a declaratory judgment action seeking a declaration that its property is used for religious purposes and is entitled to an exemption under Section 420-a of the Real Property Tax Law, the same relief as the case at bar. The Court held as follows:

> "However, where the challenge is that the taxing authority has exceeded its power, a plenary action may be brought collaterally attacking the assessment. The procedures of article 7 need not be followed because the assessment is void (*Niagara Mohawk Power Corp. v. City School Dist.*, 59 N.Y.2d 262, 269, *supra*). In *Hewlett Assocs. v. City of New York*, 57 N.Y.2d 356, 363, we observed that

'[i]t is well recognized that where a challenge is made to the taxing authority's jurisdiction over the subject property, the settled rule that reviews of a tax assessment may be obtained only by way of the statutory certiorari procedure is not applicable'. We noted in *Dun & Bradstreet v. City of New York*, 276 N.Y. 198,206, supra., that '[i]f taxing officers act without jurisdiction, their acts are illegal and void. In such a case, certiorari is not an adequate remedy event if a proper one'".

The "void" assessment may be challenged in an article 78 proceeding or in declaratory judgment action (see, *Matter of Watchtower Bible & Tract Socy. v. Lewisohn*, 35 N.Y. 2d 92 [improper withdrawal of prior exemption]; *Troy Towers Redevelopment Co. v. City of Troy*, 51 AD2d 173, *aff'd on opn below*, 41 N.Y. 2d 816; *Lee and LeForestier*, Review and Reduction of Real Property Assessments in New York Sect. 10.09 [2d ed.]). *Kahal's* argument that such a declaratory judgment action is governed either by those cases which hold that an equity action to "clear a cloud on title" may be brought at any time or by the "catch-all" six year limitation of CPLR 213 (1) is without merit. In *Solnick v. Whalen*, 49 N.Y.2d 224, 229, we noted that six-year limitation does not 'automatically or necessarily govern all such actions'. Rather we pointed out that is an examination of the substance of the relationship out of which the claim arises "reveals that the rights of the parties sought to be stabilized in an action for declaratory relief

> are, or have been open to resolution through a form of proceeding for which a specific limitation period is statutorily provided, then that period limits the time for commencement of the declaratory judgment action." (*Id.*, at 229-230; see also *Press v. County of Monroe*, 50 N.Y.2d 695).
>
> It is not disputed that a challenge to a "void" assessment may properly be sought in an article 78 proceeding, a form of proceeding for which a specific limitation period is statutorily provided. Thus *Kahal's* challenge to the 1987 assessment, to have been timely, must have been brought within four months from the time that the 1987 assessment became final as required by CPLR Article 78."

Since the petitioner in this action could have obtained relief to review the denial of the exemption by the Assessors in an Article 78 proceeding, the four month statute of limitations is applicable.

Judge Dickinson determined on December 5, 1989 in denying a motion to dismiss, that the four month statute of limitations did not apply. The *Kahal* case was decided by the Court of Appeals in 1991. The trial judge followed the Dickinson decision as the law of the case. The subsequent Court of Appeals decision should have been applied by the Trial Court. The Appellate Division did not address this issue, dismissing the respondents' cross-appeal relating thereto on the ground that respondents were not aggrieved by the trial court's decision. The Court of Appeals did not give reasons for its denial of leave to appeal.

II. THE COURTS BELOW APPLIED REASONABLE GUIDELINES TO DETERMINE THAT PETITIONER FAILED TO MEET THE "PRIMARY USE" PRONG OF NEW YORK'S TRIPARTITE TEST FOR TAX EXEMPTION WHICH DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE.

The issues presented to the Court were as follows: (a) Was the "reconditioning center" or health spa used primarily for religious purposes?; and (b) Were the homes and cottages which house the workers for both the "reconditioning center" and the food store and restaurant in New York City, being used primarily for religious purposes?

In *Living Faith, Inc. v. Commissioner*, (1991, CA7) 950 F2d 365, it was held that the Tax Court did not violate free exercise rights of non-profit business run by religious organization which sought tax exempt status where the court applied reasonable guidelines to determine whether operations of business advanced substantial nonexempt purpose and did not inquire into the merits of the particular religious faith. Similarly, in the case at bar, the Courts determined that the primary use of the real property in question did not advance a substantial religious purpose.

The petitioner operates a vegetarian restaurant and health food store in New York City, which is open to the general public and serves more than three hundred meals daily. While the use of vegetarian food is consistent with Seventh Day Adventist principles, that restaurant is not entitled to an exemption and does not have one. If the petitioner were to operate a commercial bowling alley open to the general public, it also would not be tax exempt, even

through exercise and a healthy body are consistent with the beliefs of said religion. The question to be determined is whether the religious aspect is primary or incidental. In making such determination, there are certain factors that the Courts usually find relevant.

In *Independent Church of the Realization of the Work of God, Inc.*, (A.D., 2d Dept.) 81 A.D.2d 579, the Court noted that certain health care services for a fee were advertised and open to nonadherents of plaintiff's religious principles. In *Greater New York Corporation of Seventh Day Adventists v. Town of Dover*, (1968, 2d Dept.) 29 A.D.2d 861, the Appellate Division pointed out that the premises were used primarily as a spiritual retreat, and that it was not open to the general public, but solely to adherents of the faith. In a more recent case, *Mtr. of Yeshivath v. Assessor*, 79 N.Y.2d 244 (1992), the Court of Appeals of New York states as follows (P.248):

> "The religious instruction programs at Woodbourne are provided to members of the Yeshivah only; they are not open to the general public. No fees are paid for the use of the facilities.."

In this case, the trial judge held as follows:

> "Based upon the lack of participation of guests in Adventist religious matters, the absence of doctrinal instruction or study in the Seventh Day Adventist faith, and the focus on health improvement in plaintiff's own brochure distributed to prospective guests who pay a fee for these health-related services, the Court is constrained to find that the use of the property as a reconditioning center is

> primarily for health and fitness purposes rather than for religious purposes..."

With respect to the second inquiry, approximately one-half the persons who reside in the dwellings on the property work in the New York City food store and restaurant, and the other half work in the reconditioning center. The trial judge held that:

> "...As to use of residences by staff workers and for workers in the New York City vegetarian restaurant and health food store, such use is primarily residential with respect to this property and not a use incidental to a religious use of the property."

The Trial Court heard the testimony and reviewed the evidence. This evidence and testimony was further reviewed by the Appellate Division. The findings made are fully supported by the record and do not infringe on the petitioner's First Amendment rights.

III. THERE IS NO BASIS FOR PETITIONER'S EQUAL PROTECTION CLAIM.

The other properties used by the petitioner for comparison to the subject property are not in any way comparable. The petitioner refers to camps for underprivileged children run by Catholic Charities of New York, and the camp owned by Boy Scouts of America. These clearly are not religious exemptions as is claimed in the case at bar. The Friars of Atonement property is a religious retreat that was granted an exemption many years ago. It is a retreat for the friars or monks who use the property very quietly and privately. No violation of the exemption has ever

been observed. The Methodist Church property is used for religious retreats as well as for the scout group that it sponsors. They are all members of the church. In addition, Chairman of the Board of Assessors listed a number of properties where exemptions were denied. (A-505). These include S. Columbanus; Putnam Valley Free Library; Putnam Valley Reformed Temple; The True Answer; Smithtown Tabernacle Gospel; and one-half of Camp Madison Felicia. (A-505). The petitioner submitted no proof of unequal treatment between religious organizations.

CONCLUSION

There are no special or important reasons for granting the petition in this case. The factual determinations in this case are fully supported by the record and do not involve Federal questions. The statute of limitations issue is a sufficient and independent State ground which bars further review. The respondents respectfully request that the petition be denied.

Dated: November 12, 1996

Respectfully submitted,

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Supreme Court, U.S.
FILED
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NO. 96-593
IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1996

LIVING SPRINGS RETREAT, a Religious Corporation,

Petitioner,

v.

COUNTY OF PUTNAM; TOWN OF PUTNAM VALLEY; RONALD FIORENTINO; PHILIP W. ORLANDO; and RUTH A. CLAUSE, individually and as Assessors of the Town of Putnam Valley; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY; and PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Respondents.

On Petition For A Writ Of Certiorari
To The New York Supreme Court, Appellate Division:
Second Judicial Department

REPLY BRIEF OF PETITIONER

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Petitioner files the following reply to respondents' briefs:

1. Respondents Town of Putnam Valley and individual assessors (hereafter "Putnam Valley") argue that an alleged noncompliance with a state statute of limitations is a sufficient and independent state ground barring review by this Court. To support this contention, they cite *Paschall v. Christie-Stewart, Inc.*, 414 U.S. 100 (1973). But *Paschall* is inapplicable to this case. In *Paschall* a quiet title action was filed by an oil and gas lessee to determine whether mineral deed holders or resale tax deed purchasers were owners of the minerals and entitled to royalties produced under the lease.

The trial court determined two issues: (1) the tax sale proceedings were constitutionally valid and (2) the mineral deed holders' claim was barred by the state statute of limitations. The court concluded, therefore, that the resale tax deed purchasers were the owners of the minerals. The mineral deed holders appealed. The Oklahoma Court of Appeals reversed addressing only the Fourteenth Amendment due process issue but was reversed by the Oklahoma Supreme Court which also addressed only the constitutional issues.

After reviewing the record (including the trial court judgment), this Court was unable to determine whether the state statute of limitations finding by the trial court constituted an independent and, possibly, unchallenged ground for the judgment. This Court then vacated the Oklahoma Supreme Court's judgment and remanded the case so the state supreme court could consider whether the mineral deed holders had preserved their right to challenge the trial court's statute of limitations holding, and, if so, whether under state law the statute of limitations claim independently barred the mineral deed holders' claim. On remand, the state supreme court determined that the statute of limitations issue had not been

preserved and reaffirmed its original judgment on the federal issue. *See* 544 P.2d 505 (Okla. 1974).

But, unlike *Paschall*, the trial court here did not find for the respondents with regard to the statute of limitations issue. App. at 10a. Putnam Valley acknowledged the court ruled against them on the statute of limitations question, and there was no subsequent reversal by the appeals court. Thus, there is no *existing* independent and unchallenged ground for the state court's judgment, which is the subject of this Petition.

Putnam Valley is not seeking remand so that the state court may determine whether there is a preserved independent state issue. Rather, it seeks dismissal because the state appellate court *might have* ruled differently had it elected to address the state issue. The consequence of remand, as in *Paschall*, is totally different from a dismissal. Such a course of action would deprive petitioner of any potential Supreme Court review of the federal issues upon the mere speculation that the state appellate court *might have*, but did not, rule on the issue.

In *Michigan v. Long*, 463 U.S. 1032, 1038 (1983), this Court noted it had not up to that time "developed a satisfying and consistent approach for resolving . . . vexing [questions involving whether or not nonfederal independent and adequate grounds support the judgment]." The *Long* Court stated that "[t]he process of examining state law is unsatisfactory because it requires . . . [the Court] to interpret state laws with which . . . [the Court is] generally unfamiliar, and which often . . . have not been discussed at length by the parties." *Id.* at 1039.

The *Long* Court stated that "outright dismissal of cases is clearly not a panacea because it cannot be doubted that there is an important need for uniformity in federal law, and that this need goes unsatisfied when . . . [the Court] fail[s] to

review an opinion that rests primarily upon federal grounds and where the *independence* of an alleged state ground is not apparent from the four corners of the opinion." *Id.* at 1040.

This Court, *id.* at 1040-41, then declared:

> Accordingly, when, as in this case, a state court decision fairly appears . . . to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so. . . . If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision.

In equally responsive language to Putnam Valley's argument, the *Long* Court, quoting *Minnesota v. National Tea Co.*, 309 U.S. 551, 557 (1940), stated "'it is . . . important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of a validity under the federal constitution of state action.'" *Id.* at 1041.

The issues in the Appellate Division decision, which petitioner is asking this Court to review, are two-fold: (1) whether its determination that the real property was not used primarily for a religious purpose is constitutionally permissible; and (2) whether the taxing authority violated the neutrality and equal protection requirements of the First and Fourteenth Amendments.

It is clear the second issue was decided exclusively on federal grounds. With regard to the first issue, although the

Appellate Court failed to discuss federal constitutional requirements as to the "primary use" issue, respondents do not contest petitioner's assertion that federal questions were raised at all stages with regard to this issue. *See* Petition at 11-15. The "primary use" issue decided below is "so interwoven with . . . [federal constitutional points] as not to be independent." *See Oregon v. Kennedy*, 456 U.S. 667, 671 (1982); *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985).

But Putnam Valley has also failed to disclose other relevant information which should weigh against the dismissal of this petition. Two complaints were consolidated for trial. The first pertained to tax years 1980 through 1984 for monies had and received and sought a refund of monies paid under protest. App. at 25a. The second complaint sought refund of taxes paid for the years 1985 and 1986. App. at 33a.

Putnam Valley on July 13, 1988, filed its answer to the first (1988) complaint which did not assert the statute of limitations defense. *See* Supp. App. at 1-2sa *infra*.[1] Respondent Mahopac Central School District (hereafter "school district") was the only party to raise the statute of limitations defense. It filed a pre-answer motion to dismiss claiming not to be a proper party and raising the statute of limitations defense. Judge Dickinson on September 21, 1988, dismissed the complaint with respect to the school district. *See id.* at 3-4sa. However, this order was reversed on March 6, 1990, by the Appellate Division as to both issues. *See id.* at 5-6sa. No further appeal was taken from that decision. On October 30, 1989, the school district had filed a motion to dismiss the second (1989) complaint alleging the action was barred by the statute of limitations. *See id.* at 9-10sa. On December 5,

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[1]"Supp. App. at __sa" refers to the Supplemental Appendix herein.

1989, Judge Dickinson denied that motion. *See id.* at 11-13sa. On April 24, 1990, the school district filed its answer to the second complaint reasserting the defense. *See id.* at 14-16sa. But the school district did not appeal or perfect a post-judgment cross-appeal. The earlier decision is *res judicata* with respect to the school district.

Putnam Valley on October 26, 1989, filed an answer raising the statute of limitations defense to the second (1989) complaint. *See id.* at 7-8sa. However, since Putnam Valley did not raise any statute of limitations defense in its answer nor move to dismiss as to the first (1988) complaint, it failed to either raise or preserve that defense as to the first complaint. Under New York law, CPLR 3211(e), such a defense must be raised either as an affirmative defense or in a motion to dismiss the pleadings, or it is waived.

Moreover, Putnam Valley wrongly contends that *Kahal Bnei v. Fallsburg*, 78 N.Y.2d 194 (1991), is controlling. That decision did not overturn prior case law relied upon earlier by the Appellate Division. Petitioner's complaints were for monies had and received for taxes paid under protest. In *Kahal* the plaintiff did not pay the taxes and so was required to seek a declaratory judgment rather than sue for monies had and received. Thus, the *Kahal* plaintiff was subject to the four month statute of limitations. An action for money had and received, to which the six year statute of limitations applies, is permitted under New York law "in instances where . . . money has been collected for an illegal tax assessment." *Parsa v. State,* 64 N.Y.2d 143, 148 (1984). *See also Niagara Mohawk Power Corp. v. City School Dist.*, 59 N.Y.2d 262 (1983). The statute of limitations for a refund of money collected for an illegal tax assessment, of course, would not commence until the monies are paid under protest which brings the action within the six year period of limitations as to

all taxable years at issue.

2. As to the "primary use" issue, respondents ignore the unambiguous holding by the Appellate Division. That decision presents a pure legal question without factual dispute. In short, it holds that an otherwise eligible religious organization may be denied state real property tax exemption because: (a) its program is directed to nonadherents of the faith; (b) advertising is directed at the general public; and (c) participants in its programs are not *required* to take part in religious services, indoctrination, or similar activities.

Oddly, Putnam Valley's argument that Living Springs should be denied tax exemption fails to analyze the several constitutional concerns. In fact, the argument does not discuss the activities that occur on the subject property, including the reconditioning center. Instead, it focuses on a vegetarian restaurant and health food store located in New York City. But this argument must fail for at least three reasons:

(a) The vegetarian restaurant and health food store did not even open until October of 1985. Appellate Div. J.A. at A-397-98. The trial court's noted this:

> During the latter years at issue the residences were used in part by workers in New York City health food store and vegetarian restaurant also founded by William Dull.

App. at 13a. Thus, Putnam Valley's sole attack as to this issue is completely irrelevant with respect to the first (1988) complaint seeking a refund of tax monies for tax years 1980, 1981, 1982, 1983, and 1984. *See* App. at 25a.

(b) Petitioner established a separate corporation, Metro Lifestyle Ministries, Inc., a 501(c)(3) nonprofit charitable

corporation for the New York City activities. Appellate Div. J.A. at A-673-74.

(c) The Appellate Court did not at all base its holding on the vegetarian restaurant and health food store activities.

3. With regard to the religious neutrality and equal protection claim, Putnam Valley seeks to distinguish between a religiously operated reconditioning center directed to the public and a religious retreat used by monks of the Friars of Atonement and a retreat used by a scout group sponsored by the Methodist Church. But Justice O'Connor noted that not only is there the constitutional requirement of not "making irrational distinctions among taxpayer," *Hernandez v. Commissioner of Internal Revenue*, 490 U.S. 680, 707 (1988) (O'Connor, J., dissenting), but there is an "even higher standard of equality of treatment among *religions* that the First Amendment imposes. . . ." *Id.* "[T]he line between the taxable and the immune" should not be "drawn by an unsteady hand." *Id.* at 712.

Putnam Valley continues to pursue the concept that the line may be drawn between property used to serve church members and ministries directed to the general public. But such a distinction results in "the differential application of a standard based on constitutionally impermissible differences drawn by the Government among religions" which concerned Justice O'Connor in *Hernandez*, 490 U.S. at 712.

4. Putnam Valley refers to Living Spring's use of the property as a "commercial enterprise." They also attempt to color the argument by referring to the reconditioning center as

a "health spa."[2] But the courts below did find the activities to be a commercial enterprise or the center a "spa."

Over 50 years ago this Court rejected respondents' "commercial" argument. Justice Reed in his dissent in *Murdock v. Pennsylvania*, 319 U.S. 105, 132 (1943), concluded "even if the distribution of religious books was a religious practice protected from regulation by the First Amendment, certainly the affixation of a price for the articles would destroy the sacred character of the transaction." He argued:

> Many sects practice healing the sick as an evidence of their religious faith or maintain orphanages or homes for the aged or teach the young. These are, of course, in a sense, religious practices but hardly such examples of religious rites as are encompassed by the prohibition against the free exercise of religion.

Id. at 132. But the *Murdock* majority rejected such a narrow view of which activities are sectarian and which are secular and which practices are religious and which are commercial. *Id.* at 111.

More recently in *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327 (1987), this Court dealt with the constitutionality under the Establishment Clause of the statutory exemption of religious organizations from Title VII's religious discrimination proscriptions. The case involved a Title VII claim made by an assistant building engineer at a

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[2]A "spa" has been defined as "1. A mineral spring. 2. A resort area having mineral springs. 3. A fashionable hotel or resort." *The American Heritage Dictionary* 1169 (2d college ed. 1982).

gym operated by the Mormon Church. Justice Brennan expressed concern about the constitutional difficulty involved in "the application of a religious-secular distinction." 483 U.S. at 343 (Brennan, J., concurring in the judgment). He suggested that a line be drawn between profit and nonprofit corporations stating "[i]n contrast to a for-profit corporation, a non-profit organization must utilize its earnings to finance the continued provision of the goods or services it furnishes, and may not distribute any surplus to the owners." *Id.* at 344.

In a statement which is helpful in understanding why the line drawn for tax exemption should not exclude Living Springs' activities, Justice Brennan reasoned that the distinction between a profit and nonprofit corporation operated by a religious organization

> makes plausible a church's contention that an entity is not operated simply in order to generate revenues for the church, but that the activities themselves are infused with a religious purpose. Furthermore, unlike for-profit corporations, nonprofits historically have been organized specifically to provide certain community services, not simply to engage in commerce. Churches often regard the provision of such services as a means of fulfilling religious duty and of providing an example of the way of life a church seeks to foster.

Putnam Valley attempts to portray Living Springs as a profit-making business, but the record shows that each year in question Living Springs lost money. Appellate Div. J.A. at 804-810. Living Springs was able to continue its operations notwithstanding its yearly losses only because of substantial charitable donations from supporters. *Id.* at 1130.

In fact, Putnam Valley's argument is contrary to the trial

court's finding:

> As to the third requirement, the Corporate Treasurer testified that the corporation had suffered substantial losses in most of the years in question and there is no evidence of any pecuniary benefit inuring to corporate officers, members or employees.

App. at 11a.

Part of the flaw in Putnam Valley's analysis is its focus on Living Springs' reconditioning program. But the program is much broader. It includes a city evangelism training center (Appellate Div. J.A. at A-390-91), stop smoking program conducted in Adventist Churches (*id.* at A-420), a park ministry (*id.* at A-400-01), Bible seminars (*id.* at A-151), and evangelistic services (*id.* at A-731-32), as well as spiritual counseling (*id.* at A-679-80). The training center trained young people sent by Adventist Church leaders from all over the world. *Id.* at A-390-91. A representative class schedule includes classes in Adventist Church doctrine and Christian ethics. *Id.* at A-403-04.

5. As to the school district's claim that it is not a proper party, it filed a motion to dismiss which was granted. *See* Supp. App. at 3-4sa. The Appellate Division reversed, however, concluding it was a proper party. *Id.* at 5-6sa. The school district took no subsequent appeal nor did it perfect a cross-appeal after the entry of judgment.

CONCLUSION

For the foregoing reasons and for the reasons stated in the Petition for a Writ of Certiorari, this Court should grant the petition.

Dated: November 27, 1996

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

SUPPLEMENTAL APPENDIX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

989-88

LIVING SPRINGS RETREAT, a Religious Corporation,

Plaintiff,

-against-

COUNTY OF PUTNAM; TOWN OF PUTNAM VALLEY, RONALD FIORENTINO, PHILIP W. ORLANDO AND RUTH A. CLAUSE, INDIVIDUALLY AND AS ASSESSORS OF THE TOWN OF PUTNAM VALLEY; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY; AND PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Defendants.

ANSWER

The defendants TOWN OF PUTNAM VALLEY, RONALD FIORENTINO, PHILIP W. ORLANDO AND RUTH A. CLAUSE, INDIVIDUALLY AND AS ASSESSORS OF THE TOWN OF PUTNAM VALLEY, by their attorney, RICHARD T. BLANCATO, as and for their answer to the complaint herein, allege as follows:

1. Deny each and every allegation of the complaint herein contained in paragraphs numbered "9", "10", "11", "12", "13", "14", "15", "16", "18", "19" and "20".

2. Deny any knowledge or information sufficient to form a belief as to the allegation of the complaint herein numbered "1", "3", "4", "5", "6", "7", "8" and "17".

WHEREFORE, the said defendants demand that the complaint herein be dismissed, together with costs and disbursements.

Dated: Tarrytown, New York
July 13, 1988

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

RJI-269

Index NO. 989/88
Mot. Cal: 9/20/88

LIVING SPRINGS RETREAT, A religious Corporation,

Plaintiff,

-against-

COUNTY OF PUTNAM, TOWN OF PUTNAM VALLEY, RONALD FIORENTINO, PHILIP W. ORLANDO and RUTH A. CLAUSE, Individually and as Assessors of the Town of Putnam Valley: MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY: and PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Defendant.

DECISION

DICKINSON, J.

Motion by Defendant Mahopac Central School District to dismiss the complaint against it.

Motion is granted. As Defendant acknowledges, the law is clear that the moving Defendant has no authority to tax or grant tax exemptions. As a result, the complaint must be dismissed against it.

The foregoing shall constitute the full decision and order of this Court.

/s/ Fred A. Dickinson
J.S.C.

Dated: Carmel, New York
September 21, 1988

*LORENTZ W. HANSEN
175 Main Street
White Plains, New York 10601

GRANIK, SILVERMAN, SANDBERG,
CAMPBELL & NOWICKI
254 South Main Street
P.O. Box 370
New City, New York 10956-0370
(Atty. for MAH. CENT. SCHOOL &
TOWNS OF CARMEL & PUT. VALLEY)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

989-88 4658s
___ AD2d ___ J/ep

Submitted - March 6, 1990

THOMAS R. SULLIVAN, J.P.
STANLEY HARWOOD
VINCENT R. BALLETTA, JR.
SONDRA MILLER, JJ.

2239E

Living Springs Retreat, etc., appellant,
v County of Putnam, et al., defendants; Mahopac Central School District of the Towns of Carmel and Putnam Valley, respondent.

DECISION & ORDER

Lorentz W. Hansen, White Plains, N.Y., for appellant.

Granik Silverman Sandberg Campbell Nowicki & Resnik, New City, N.Y.

(Robert M. Lefland of counsel), for respondent.

In an action, *inter alia,* for a judgment declaring certain parcels of real property exempt from real property taxes, the plaintiff appeals from an order of the Supreme Court, Putnam County (Dickinson, J.), dated September 21, 1988, which granted the motion of the defendant Mahopac Central School District of the Towns of Carmel and Putnam Valley to dismiss the complaint as against it.

ORDERED that the order is reversed, on the law, with costs, the motion is denied, the complaint is reinstated as against the defendant Mahopac Central School District of the Towns of Carmel and Putnam Valley, and its time to serve

an answer to the complaint is extended until 30 days after service upon it of a copy of this decision and order, with notice of entry.

The plaintiff commenced this action to have certain realty declared tax-exempt and to recover property taxes paid under protest. Contrary to the contention of the defendant Mahopac Central School District of the Towns of Carmel and Putnam Valley (hereinafter the school district), we find that it was properly named as a defendant in the action. While the school district did not render the determination finding the plaintiff ineligible for tax-exempt status, the plaintiff has alleged that a substantial portion of the tax moneys paid by it consisted of school taxes collected in violation of RPTL 420-a(1)(a) and RPTL 1308. Accordingly, the school district would be liable for the return of tax moneys in the event that the plaintiff prevails in this action (*see generally, Niagara Mohawk Power Corp. v City School Dist. of City of Troy,* 59 NY2d 262; *Bethlehem Steel Corp. v Board of Educ. of City School Dist. of Lackawana,* 44 NY2d 831, *appeal dismissed sub nom City of Rochester v Waldert,* 439 US 922).

Furthermore, we find unpersuasive the school district's contention, raised on the motion to dismiss, that the plaintiff cannot maintain a plenary action for the relief sought (*see, Niagara Mohawk Power Corp. v City School Dist. of City of Troy, supra, Kahre-Richardes Family Foundation v Village of Baldwinsville,* 101 AD2d 689).

SULLIVAN, J.P., HARWOOD, BALLETTA and MILLER, JJ., concur.

ENTER:

MARTIN H. BROWNSTEIN (stamp)

Martin H. Brownstein
Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

LIVING SPRINGS RETREAT, A RELIGIOUS CORPORATION,

Plaintiff,

-against-

COUNTY OF PUTNAM; TOWN OF PUTNAM VALLEY, RONALD FIORENTINO, PHILIP W. ORLANDO AND RUTH A. CLAUSE, INDIVIDUALLY AND AS ASSESSORS OF THE TOWN OF PUTNAM VALLEY; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY; AND PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Defendant

ANSWER

The defendants, TOWN OF PUTNAM VALLEY, RONALD FIORENTINO, PHILIP W. ORLANDS AND RUTH A. CLAUSE, INDIVIDUALLY AND AS ASESSORS OF THE TOWN OF PUTNAM VALLEY, as and for their Answer to the Complaint herein, allege as follows:

FIRST: Deny any information sufficient to form a belief as to the allegations of the complaint contained in paragraph numbered "1", "3", "4", "5", "6", "7", "8", and "17".

SECOND: Deny each and every allegation contained in paragraphs of the complaint numbered "9", "10", "11", "12", "13", "14", "15", "16", "18", "19" and "20".

AS AND FOR A COMPLETE
AFFIRMATIVE DEFENSE

THIRD: Claims for property tax exemption and refund for alleged overcharps are subject to the four month limitation period applicable to Article 78 proceedings.

FOURTH: This action is barred by the four month time limitation period.

WHEREFORE, defendants demand judgment dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: October 26, 1989
Tarrytown, New York 10591

RICHARD T. BLANCATO
Attorney for Defendants
Town of Putnam Valley
and Assessor.
Office & P.O. Address
360 South Broadway
Tarrytown, New York 10591
(914) 332-5723

TO: LORENTZ W. HANSEN, ESQ.
Attorney for Plaintiff
175 Main Street
White Plains, New York 10601

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

INDEX NO. 1411/89

LIVING SPRINGS RETREAT, A RELIGIOUS CORPORATION,

Plaintiff,

-against-

COUNTY OF PUTNAM; TOWN OF PUTNAM VALLEY; RONALD FIORENTINO; PHILIP W. ORLANDO and RUTH A. CLAUSE, individually and as ASSESSORS OF THE TOWN OF PUTNAM VALLEY; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY; AND PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Defendants.

NOTICE OF MOTION TO DISMISS

JUDGE ASSIGNED: FRED A. DICKINSON

SIRS:

PLEASE TAKE NOTICE, that upon the Complaint herein, the Affidavit of Phyllis S. Jaffe, sworn to October 27, 1989 and the exhibits attached thereto, the undersigned will move this Court at the County Courthouse, Carmel, New York 10512, on November 21, 1989 at 9:30 a.m. or as soon thereafter as counsel can be heard, for an order pursuant to CPLR Rule 3211 dismissing the complaint against defendant Mahopac Central School District on the following grounds: (a) failure to state a cause of action against such defendant; (b) the issue is *res judicata;* (c) the complaint is untimely

under the statute of limitations; and for such other and further relief as this Court may deem appropriate.

Pursuant to CPLR 2214(b), answering affidavits, if any, are required to be served upon the undersigned at least seven days before the return date of this motion.

DATED: White Plains, New York
October 30, 1989

YOURS, etc.,

PLUNKETT & JAFFE, P.C.
Attorneys for Defendant
Mahopac Central School District
1 North Broadway
White Plains, New York 10601
(914) 948-7722

TO: Lorentz W. Hansen, Esq,
Attorney for Plaintiff
175 Main Street
White Plains, New York 10601
(914) 948-3908

Town of Putnam Valley and
Town of Putnam Valley Board of Assessors
Defendants
Oscawana Lake Road
Putnam Valley, New York 10579

County of Putnam
Defendant
County Office Building
2 County Center
Carmel, New York 10512

SHORT FORM ORDER

SUPREME COURT—STATE OF NEW YORK
TRIAL/SPECIAL TERM, PART , COUNTY OF PUTNAM

INDEX NUMBER 1411, 1989
MOTION DATE Nov. 28, 1989

MOTION CAL. NUMBER
TRIAL CAL. NUMBER

LIVING SPRINGS RETREAT, A RELIGIOUS CORPORATION,

Plaintiff,

-against-

COUNTY OF PUTNAM: TOWN OF PUTNAM VALLEY: RONALD FIORENTINO, PHILIP W. ORLANDO and RUTH A. CLAUSE individually and as ASSESSORS OF THE TOWN OF PUTNAM VALLEY; MAHOPAC CENTRAL SCHOOL DIST. OF THE TOWNS OF CARMEL AND PUTNAM VALLEY and PUTNAM VALLEY FIRE DIST.,

Defendants.

Present: HON. FRED A. DICKINSON Justice RJI NO.

To commence the statutory time period for appeals as of right (CPLR 5513[a], you are advised to serve a copy of this order, with notice of entry, upon all parties.

The following papers numbered 1 to 16 read on this motion by defendant Mahopac Central School District to dismiss the complaint and cross motion by defendant County of Putnam for the same relief.

	PAPERS NUMBERED
Notice of Motion - Affidavits	1-2
Notice of cross motion-Affirmation	11-12
Answering Affidavits	7,14
Replying Affidavits	

	PAPERS NUMBERED
Affidavits	
Filed Papers	
Memorandum of Law	6,16
Pleadings - Exhibits -	3-5,8-10,13,15

Upon the foregoing papers it is ordered that this motion and cross motion are denied. The complaint sets forth a valid cause of action against each defendant (*Niagara Mohawk v Troy School District*, 59 NY 2d 262), is not barred by the doctrine of *res judicata* (see, *F.O.R. Holding Co. v Assessors of Clarkstown*, 45 AD 2d 875, app dism. 35 NY2d 959) and is not untimely (*Niagara Mohawk v Troy School District, supra*)

Defendants shall have thirty (30) days from the date of entry of this order within which to serve their answers.

Pursuant to Rule 202.12(c) of the Uniform Rules for the Supreme and County Courts, the parties are directed to complete all discovery and file a note of issue and certificate of readiness on or before June 1, 1990. Failure to comply with this Rule or to seek an extension of time from this Court will result in an order striking the above-captioned matter from its calendar. An extension may be sought only by notice of motion *or* pursuant to stipulation signed by all parties and to be "so ordered" by the Court and accompanied by an affidavit setting forth the reasons for the delay.

12/11/89 (continued)

There shall be no further motions made in this matter without the permission of the Court.

Any further motion relating to disclosure or to a bill of particulars shall contain an affirmation of good faith required by paragraphs (a) and (b) of Rule 202.7 and shall be in compliance with paragraph (c) thereof (22 NYCRR 202.7 (effectibe April 1, 1988).

A preliminary conference will be held only upon specific request therefor made in compliance with Rule 202.12 (b).

/s/ illegible
J.S.C.

Dated: Carmel, N.Y.
December 5, 1989

PLUNKETT & JAFFE, P.C. (Mahopac School District)
1 North Broadway
White Plains, N.Y. 10601

LORENTZ W. HANSEN (pltf)
175 Main Street
White Plains, N.Y. 10601

PUTNAM COUNTY DEPT. OF LAW (Putnam County)
Two County Center
Carmel, N.Y. 10512

ROBERT LEFLAND, ESQ.
254 Main St., P.O. Box 370
New City, N.Y. 10956

RICHARD T. BLANCATO, ESQ.
360 S. Broadway,
Tarrytown, N.Y. 10591

LEONARD PACE, Chief Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

INDEX NO. 989/88
Assigned to Hon. Fred A. Dickinson

LIVING SPRINGS RETREAT, A RELIGIOUS CORPORATION,

Plaintiff,

-against-

COUNTY OF PUTNAM, TOWN OF PUTNAM VALLEY, RONALD FIORENTINO, PHILIP W. ORLANDO and RUTH A. CLAUSE, Individually and as Assessors of the Town of Putnam Valley; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY; and PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Defendants.

VERIFIED ANSWER

Defendant, MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY, by its attorneys, GRANIK, SILVERMAN, SANDBERG, CAMPBELL, NOWICKI & RESNIK, ESQS., answering the complaint of the plaintiff herein, respectfully shows to the Court and alleges:

ANSWERING A FIRST CAUSE OF ACTION

1. Denies knowledge and/or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "1", "3", "4", "5", "6", "7",

"8", "9", "10", "11", "17" and "18" of the plaintiff's complaint.

2. Denies each and every allegation contained in paragraphs numbered "12," "13", "14", "15", "16" and "19" and "20" of the plaintiff's complaint.

AS AND FOR A FIRST COMPLETE AFFIRMATIVE DEFENSE

3. The complaint fails to state a cause of action against defendant Mahopac Central School District of the Towns of Carmel and Putnam Valley in that defendant has no authority to determine assessments of real property or exemptions from real property taxes.

AS AND FOR A SECOND COMPLETE AFFIRMATIVE DEFENSE

4. The complaint is barred by the Statute of Limitations.

AS AND FOR A THIRD COMPLETE AFFIRMATIVE DEFENSE

5. The plaintiff has not conducted its activities and use of the subject real property exclusively for religious and/or benevolent purposes so as to entitle plaintiff to real property tax exemption under Article 4 of the Real Property Tax Law.

WHEREFORE, defendant Mahopac Central School District of the Towns of Carmel and Putnam Valley demands the complaint be dismissed, together with the costs and disbursements of this action.

Dated: New City, New York
April 24, 1990

GRANIK SILVERMAN SANDBERG
CAMPBELL NOWICKI RESNIK
Attorneys for Defendant

MAHOPAC CENTRAL SCHOOL DISTRICT
OF THE TOWNS OF CARMEL AND
PUTNAM VALLEY
254 So. Main Street
New City, NY 10956
(914) 634-8822

TO:

LORENTZ W. HANSEN, ESQ.
Attorney for Plaintiff
175 Main Street
White Plains, New York 10601
(914) 948-3908

STATE OF NEW YORK)
)ss.:
COUNTY OF ROCKLAND)

I, the undersigned, am an attorney admitted to practice in the courts of New York State and say that I am the attorney of record, or of counsel with the attorneys of record, for the defendant. I have read the annexed Answer, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following:

All books, records, correspondence, etc. in my possession.

The reason I make this affirmation instead of defendant is because it does not maintain offices in the county wherein I maintain my offices.

I affirm the foregoing statements are true under penalties of perjury.

Dated: New City, New York
April 24, 1990

/s/ David W. Silverman
DAVID W. SILVERMAN